



50 YEARS OF FUN!

Post Office Box 9010 Addison, Texas 75001-9010 5300 Belt Line Road (972) 450-7000
FAX (972) 450-7043

AGENDA

REGULAR MEETING OF THE CITY COUNCIL

NOVEMBER 25, 2003

7:30 P.M.

COUNCIL CHAMBERS

5300 BELT LINE ROAD

REGULAR SESSION

Item #R1 – Consideration of Old Business

Item #R2 – Consent Agenda

CONSENT AGENDA

- #2a – Approval of the Minutes for the November 11, 2003 Council Meeting.
-
- #2b – Consideration of a Resolution authorizing the City Manager to enter into a contract for services for \$40,000.00 with Communities in Schools Dallas, Inc. for fiscal year 2003-2004, subject to a final review and approval of the City Attorney.
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- #2c – Consideration of a Resolution authorizing the City Manager to enter into a contract for services for \$5,000.00 with The Family Place, Inc. for fiscal year 2003-2004, subject to a final review and approval of the City Attorney.
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- #2d – Consideration of a Resolution authorizing the City Manager to enter into a contract for services for \$15,000.00 with Metrocrest Social Service Center for fiscal year 2003-2004, subject to a final review and approval of the City Attorney.
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- #2e – Consideration of a Resolution authorizing the City Manager to enter into a contract for services for \$6,600.00 with the Dance Council for fiscal year 2003-2004, subject to a final review and approval of the City Attorney.
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- #2f – Consideration of a Resolution authorizing the City Manager to enter into a contract for services for \$5,000.00 with the Repertory Company Theatre for fiscal year 2003-2004, subject to a final review and approval of the City Attorney.
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- #2g – Consideration of a Resolution authorizing the City Manager to enter into a contract for services for \$15,000.00 with Senior Adult Services for fiscal year 2003-2004, subject to a final review and approval of the City Attorney.
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- #2h – Consideration of a Resolution authorizing the City Manager to enter into a contract for services for \$5,000.00 with Honoring Other Peoples Everywhere (H.O.P.E.) for fiscal year 2003-2004, subject to a final review and approval of the City Attorney.
-

#2i – Consideration of a Resolution authorizing the City Manager to enter into a contract for services for \$8,500.00 with Brookhaven College Center for the Arts for fiscal year 2003-2004, subject to a final review and approval of the City Attorney.

#2i – Consideration of a Resolution authorizing the City Manager to enter into a contract for services for \$2,500.00 with DFW International for fiscal year 2003-2004, subject to a final review and approval of the City Attorney.

Item #R3 – Consideration of approval of a final plat for one lot of .924 acres, located at 4300 Beltway Drive, on application from Advantage-Compass Addition, Richard and Pam Davis, represented by Mr. David B. Reaves of Grant Engineering.

Attachments:

1. Docket Map
2. Staff Report
3. Plans

The Planning and Zoning Commission Findings:

The Addison Planning and Zoning Commission, meeting in regular session on October 23, 2003, voted to recommend approval of the final plat for Advantage-Compass Addition, subject to the following conditions:

1. Individual legal descriptions should be provided for Lot 2, Beltway Office Park in Addison, and Lot 1, Block A, Beltwood Business Park in Farmers Branch, on page 1 of 2.
2. South line of Lot 2, within the Town of Addison should be clearly marked with bearing and distance on page 2 of 2 on the plat.
3. Page 2 of 2 should be changed to page 1 of 2 (this has been corrected).
4. The northeast corner of Lot 1, Block A shows a “square” that is not marked or described. This must be addressed or removed.
5. Legal description on current page 1 of 2 is not necessary with the plat on current page 2 of 2.
6. Site/Civil drawings must be prepared and approved by the Town in advance of any construction improvements on-site and off-site. Any revisions to the existing water, sewer, drainage and paving infrastructure may require new utility or access easements.
7. Joint approval of all Site/Civil drawings by Farmers Branch is required.

Voting Aye: Bernstein, Braun, Doepfner, Herrick
Voting Nay: None
Absent: Benjet, Jandura

Administrative Recommendation:

Administration recommends approval.

Item #R4 – Consideration of a Resolution approving and authorizing the City Manager to enter into an agreement entitled Third Amendment to Master Facilities Agreement regarding the design, construction and funding of certain public improvements, including the expenditure of public funds, on certain property located within that area of the Town known as Addison Circle.

Attachments:

1. Memorandum from Carmen Moran
2. Resolution

Administrative Recommendation:

Administration recommends approval.

Item #R5 – Consideration of adoption of an ordinance of the Town of Addison, Texas granting to TXU Gas Distribution, a division of TXU Gas Company, a Texas corporation, its successors and assigns, as permitted herein, a franchise to construct, maintain, and operate pipelines and equipment in the Town of Addison, Dallas County, Texas, for the transporting, delivery, sale, and distribution of natural gas in, out of, and through said city for all purposes; providing for the payment of a fee or charge for the use of the public rights-of-ways; providing that such fee shall be in lieu of other fees and charges, excepting ad valorem taxes; repealing all previous gas franchise ordinances; providing other terms and conditions in connection with the provision of natural gas; providing a severability clause; providing an effective date.

Attachments:

1. Council Agenda Item Overview
2. Ordinance

Administrative Recommendation:

Administration recommends approval.

Item #R6 – Consideration of a Resolution authorizing the City Manager to enter into contracts in the amount of \$1,753,567.68 with Blue Cross/Blue Shield and Delta Dental for employee medical and dental insurance for the year 2004.

Attachments:

1. Council Agenda Item Overview
2. Rate Comparison
3. Summary of Benefits

Administrative Recommendation:

Administration recommends approval.

Item #R7 – Consideration of a Resolution authorizing the City Manager to enter into contracts in the amount of \$117,838.60 with Hartford Life Insurance Company and UnumProvident for life, accidental death and dismemberment insurance and long term disability insurance for the year 2004.

Attachment:

1. Council Agenda Item Overview

Administrative Recommendation:

Administration recommends approval.

Item #R8 – Consideration of a Resolution approving an amendment to Professional Services Agreement in an amount not to exceed \$49,470.00 with URS Corporation for the design of the Arapaho Road Bridge at Midway Road.

Attachments:

1. Council Agenda Item Overview
2. Amendment (Change Order)
3. Attachment K – Additional Scope of Service
4. Attachment L – Price Fee Breakdown
5. Attachment M – Revised Estimated Schedule

Administrative Recommendation:

Administration recommends approval.

Item #R9 – Consideration of a Resolution authorizing the City Manager to award incentive compensation to Washington Staubach Addison Airport Venture for fiscal year 2002-2003.

Attachments:

1. Council Agenda Item Overview
2. Memorandum from Mark Acevedo
3. Incentive Compensation Spreadsheet
4. Memorandum from Randy Moravec
5. Additional Services Compensation
6. Second Amendment to the Operating Agreement
7. Exhibit 3 From Operating Agreement

Administrative Recommendation:

Administration recommends approval.

Adjourn Meeting

Posted 5:00 p.m.
November 20, 2003
Carmen Moran
City Secretary

**THE TOWN OF ADDISON IS ACCESSIBLE TO PERSONS
WITH DISABILITIES. PLEASE CALL (972) 450-2819 AT LEAST
48 HOURS IN ADVANCE IF YOU NEED ASSISTANCE.**

OFFICIAL ACTIONS OF THE ADDISON CITY COUNCIL

November 11, 2003
7:30 p.m. - Council Chambers
5300 Belt Line Road

Present: Mayor Wheeler, Councilmembers Chow, Hirsch, Mallory, Niemann, Silver,
Turner
Absent: None

Item #WS1 – Presentation of the DART 2030 Transit System Plan.

No action taken.

Item #R1 – Consideration of Old Business

The following employees were introduced to the Council: Douglas Spray (Fire) and Bryan Ball (Police).

Mayor Wheeler noted that Tuesday, November 11, 2003 is Veteran's Day and commended the services of the country's veterans.

Item #R2 – Consent Agenda

Item #2a – Approval of the Minutes for the October 28, 2003 Council meeting.
(Approved)

Item #2b – Consideration of approval of construction and authorization of final payment in the amount of \$2,307.71 to J & J Sprinkler and Landscape, Inc. for completion of the Brookhaven Club Drive median and parkway landscape improvements. (Approved)

Item #2c – Consideration of approval of construction and authorization of final payment in the amount of \$3,363.94 to American Civil Constructors, Inc. for completion of the Oaks North entry monument signs and sidewalk paving. (Approved)

Item #2d – Consideration of a Resolution authorizing the City Manager to enter into a contract for services in the amount of \$9,000.00 with the Metrocrest Chamber of Commerce for fiscal year 2003-2004, subject to final review and approval of the City Attorney. (Approved) (R03-105)

Item #2e – Consideration of a Resolution authorizing the City Manager to enter into a contract for services in the amount of \$5,000.00 with Special Care and Career Services for fiscal year 2003-2004, subject to final review and approval of the City Attorney. (Approved) (R03-106)

Councilmember Turner moved to duly approve the above items. Councilmember Silver seconded. The motion carried.

Voting Aye: Wheeler, Chow, Hirsch, Mallory, Niemann, Silver, Turner
Voting Nay: None
Absent: None

Item #R3 – Consideration of a Resolution nominating a fourth member to the Board of Directors of the Dallas Central Appraisal District.

Councilmember Silver moved to duly pass Resolution No. R03-107 nominating Bill Binford as a fourth member to the Board of Directors of the Dallas Central Appraisal District. Councilmember Turner seconded. The motion carried.

Voting Aye: Wheeler, Chow, Hirsch, Mallory, Niemann, Silver, Turner
Voting Nay: None
Absent: None

Item #R4 – Consideration of an Ordinance approving a meritorious exception to Chapter 62, Signs, Section 62-163, Area, for Potbelly Sandwich Works, located at 4945 Belt Line Road, on application from Potbelly Sandwich Works.

Councilmember Silver moved to duly pass Ordinance No. 003-037 approving a meritorious exception to Chapter 62, Signs, Section 62-163, Area, for Potbelly Sandwich Works, located at 4945 Belt Line Road, subject to staff recommendation of allowing attached building signs with letters up to 30 inches in height to be located on the south and east façade. Councilmember Mallory seconded. The motion carried.

Voting Aye: Wheeler, Chow, Hirsch, Mallory, Niemann, Silver, Turner
Voting Nay: None
Absent: None

Item #R5 – **PUBLIC HEARING** and consideration of an Ordinance approving a Special Use Permit for a Christmas Tree lot, including yard decorations, located at 14223 Dallas Parkway, on application from Mr. Jeff Patton of Patton's Corner.

Mayor Wheeler opened the meeting as a public hearing. There were no questions or comments. Mayor Wheeler closed the meeting as a public hearing.

Councilmember Mallory moved to duly pass Ordinance No. 003-038 approving a Special Use Permit for a Christmas tree lot, including yard decorations, located at 14223 Dallas Parkway, subject to no conditions. Councilmember Silver seconded. The motion carried.

Voting Aye: Wheeler, Chow, Hirsch, Mallory, Niemann, Silver, Turner
Voting Nay: None
Absent: None

Item #R6 – **PUBLIC HEARING** and consideration of an Ordinance approving an amendment to an existing Special Use Permit for a restaurant and approval of a Special

Use Permit for the sale of alcoholic beverages for on-premises consumption only, located at 3711 Belt Line Road (formerly Atlanta Bread Company), on application from Mama Fu's Noodle House, represented by Ms. Candy D. Arnold.

Mayor Wheeler opened the meeting as a public hearing. There were no questions or comments. Mayor Wheeler closed the meeting as a public hearing.

Councilmember Silver moved to duly pass Ordinance No. 003-039 approving an amendment to an existing Special Use Permit for a restaurant and approval of a Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, located at 3711 Belt Line Road (formerly Atlanta Bread Company), on application from Mama Fu's Noodle House, subject to the following condition:

1. The applicant shall not use any terms, including the term "bar", "tavern" or graphic depictions that denote alcoholic beverages in exterior signs.

Councilmember Turner seconded. The motion carried.

Voting Aye: Wheeler, Chow, Hirsch, Mallory, Niemann, Silver, Turner

Voting Nay: None

Absent: None

Item #R7 – Consideration of a approval of a final plat for one lot of .924 acres, located at 4300 Beltway Drive, on application from Advantage-Compass Addition, Richard and Pam Davis, represented by Mr. David B. Reaves of Grant Engineering.

The applicant requested postponement of this item until the November 25, 2003 Council meeting.

Councilmember moved to postpone the approval of a final plat for one lot of .924 acres, located at 4300 Beltway Drive, on application from Advantage-Compass Addition, Richard and Pam Davis until the November 25, 2003 Council meeting. Councilmember Mallory seconded. The motion carried.

Voting Aye: Wheeler, Chow, Hirsch, Mallory, Niemann, Silver, Turner

Voting Nay: None

Absent: None

Item #R8 – **PUBLIC HEARING** and consideration of an Ordinance approving amendments to the concept plan for the residential sub district and approval of a preliminary development plans, with waivers, for a 183-unit town home/condominium development in the UC (Urban Center) district, located at 9.732 acres north of Morris Avenue, east of Quorum Drive, south of Airport Parkway and west of the proposed Spectrum Drive (Addison Circle) on application from CityHomes, represented by Mr. Larry Decker of Bloodgood Sharp Buster Architects and Planners, Inc.

Mayor Wheeler opened the meeting as a public hearing. The following persons spoke on this item:

1. John Wye, Addison Resident
2. Art Lomenick, Addison Resident
3. Bob Jacobi, Addison Resident

There were no other questions or comments. Mayor Wheeler closed the meeting as a public hearing.

Councilmember Mallory moved to duly pass Ordinance No. 003-040 approving amendments to the concept plan for the residential sub district and approval of a preliminary development plans, with waivers, for a 183-unit town home/condominium development in the UC (Urban Center) district, located at 9.732 acres north of Morris Avenue, east of Quorum Drive, south of Airport Parkway and west of the proposed Spectrum Drive (Addison Circle) on application from CityHomes, subject to the following conditions.

Approval of the amendments to the concept plan as follows:

1. The park site (0-6) shall be moved back to its location in the original concept plan, but surrounded by streets as shown on the CityHomes plan.
2. The M-2 "Mews" street shall be re-aligned and wrapped around the park as shown on the CityHomes plan.
3. The R-4 "Residential" street is reconfigured to go with the R-street section at Spectrum Drive and Quorum Drive, as shown on the CityHomes Plan.

Approval of the proposed preliminary development plan with the following waivers to design standards:

1. Approval of the waiver of design standards in order to allow lot widths of not less than 20 feet.
2. Approval of the waiver to design standards in order to allow depths of not less than 55 feet.
3. Approval of the waiver to design standards in order to allow lot coverage that exceeds 65% of the lot.
4. Approval of the waiver to design standards in order to allow up to 10% of the total lots in the development to have unit sizes that are less than 1,600 square feet, provided that no units shall be less than 1,450 square feet.
5. Approval of the waiver to design standards in order to allow all lots that face onto major streets (as shown on the attached plan) to be 90% brick (stone and cast stone shall count as brick) on the fronts and sides of the

buildings, and not less than 10% brick on the rear of the buildings (excluding garage doors). The remaining percentages on the buildings can be stucco or hardi-plank.

6. The interior lots (as shown on the attached plan) may be not less than 60% brick on the fronts and sides of the buildings, and not less than 10% brick on the rear of the buildings (excluding garage doors). The remaining percentages on the buildings can be stucco or hardi-plank.

Approval of the site plan, subject to the following conditions:

1. Final engineering plans and specifications must be approved by the Town, including the following:
 - a. Existing and proposed utility mains and service connections, in accordance with the Town's standard construction specifications and the existing development plans for Addison Circle.
 - b. Grading and drainage design for all necessary on-site and off-site improvements.
 - c. Street, sidewalk, and driveway design.
2. All proposed public infrastructure must be located within dedicated right-of-way or appropriate easements.
3. Proposed fire hydrant layout must be approved by the Town's Fire Chief.
4. All on-site engineering design must be coordinated with the proposed plan preparation of the adjacent Spectrum Drive.
5. Traffic control, signalization, and erosion control plans must be prepared for all on-site and off-site improvements.

Councilmember Niemann seconded. The motion carried.

Voting Aye: Wheeler, Chow, Hirsch, Mallory, Niemann, Silver, Turner

Voting Nay: None

Absent: None

Item #R9 – Consideration of a Resolution authorizing the City Manager to enter into an advertising contract with the Dallas Morning News to purchase 26 insertions in the Friday Guide.

Councilmember Turner moved to duly pass Resolution No. R03-108 authorizing the City Manager to enter into an advertising contract with the Dallas Morning News to purchase 26 insertions in the Friday Guide. Councilmember Chow seconded. The motion carried.

Voting Aye: Wheeler, Chow, Hirsch, Mallory, Niemann, Silver, Turner
Voting Nay: None
Absent: None

Item #R10 – Consideration of a Resolution authorizing the City Manager to enter into a contract in the amount of \$30,000.00 with the Texas Chamber Orchestra for fiscal year 2003-2004, subject to final review and approval of the City Attorney.

Councilmember Silver moved to duly pass Resolution No. R03-109 authorizing the City Manager to enter into a contract in the amount of \$30,000.00 with the Texas Chamber Orchestra for fiscal year 2003-2004, subject to final review and approval of the City Attorney. Councilmember Chow seconded. The motion carried.

Voting Aye: Wheeler, Chow, Hirsch, Mallory, Niemann, Silver, Turner
Voting Nay: None
Absent: None

There being no further business before the Council, the meeting was adjourned.

Mayor

Attest:

City Secretary

Council Agenda Item: #2b**SUMMARY:**

To consider approval of the contracts for services between the Town of Addison and the non-profits agencies funded from the General Fund and Hotel Fund budgets. The agencies and the amounts were approved by the City Council and included in the adopted FY 2003/04 budget.

FINANCIAL IMPACT:

All contracts are fully funded within the General Fund and Hotel Fund budgets.

	General Fund	Hotel Fund
Budgeted Amount:	<u>\$82,500.00</u>	<u>\$20,100.00</u>
Cost:	<u>\$82,500.00</u>	<u>\$20,100.00</u>

BACKGROUND:

During the FY 2003/04 budget process, the City Council reviewed the following non-profit agencies and funding amounts for FY 2003/04. Attached are the contracts for the non-profits and minor changes have made to ensure consistency within the contracts and to reflect changes to performances and their dates as applicable.

General Fund:	Amount	Hotel Fund	Amount
Communities in Schools Dallas	\$40,000	Brookhaven College for the Arts	\$8,500
Senior Adult Services	\$15,000	Dance Council	\$6,600
Metrocrest Social Service Center	\$15,000	Repertory Company Theatre	\$5,000
H.O.P.E.	\$5,000		
The Family Place	\$5,000		
DFW International	\$2,500		
TOTAL	\$82,500	TOTAL	\$20,100

RECOMMENDATION:

It is recommended that the City Council approve the resolutions authorizing the City Manager to enter into contracts with the non-profits for the amounts listed above. These contracts shall be subject to final review and approval by the City Attorney to allow the flexibility to negotiate any minor changes as needed.

AGENCY	FY 2002/03 FUNDING LEVEL	FY 2003/04 FUNDING LEVEL
<i>GENERAL FUND:</i>		
Communities in Schools Dallas, Inc.	\$30,000	\$40,000
Senior Adult Services	\$15,000	\$15,000
Metrocrest Social Service Center +	\$15,000	\$15,000
Metrocrest Chamber of Commerce +	\$9,000	\$9,000
Special Care and Career Services	\$5,000	\$5,000
H.O.P.E.	\$5,000	\$5,000
The Family Place	\$5,000	\$5,000
DFW International *	\$0	\$2,500
Metrocrest Family Medical Clinic	\$0	\$0
SUBTOTAL	\$ 84,000	\$ 96,500
<i>HOTEL FUND:</i>		
WaterTower Theatre **	\$380,000	\$380,000
Texas Chamber Orchestra +	\$15,000	\$30,000
Brookhaven College Center for the Arts	\$8,500	\$8,500
Dance Council	\$6,700	\$6,600
Repertory Company Theatre	\$8,700	\$5,000
Nova Dancing Company (Barefoot Brigade) *	\$0	0
SUBTOTAL	\$ 418,900	\$ 430,100
GRAND TOTAL	\$ 502,900	\$ 526,600

* Indicates a first time request

** Request includes \$150,000 in potential Town "Matching Funds"

+ Indicates that the agency's funding amount was approved by City Council on 11/11/03

TOWN OF ADDISON, TEXAS

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING A CONTRACT FOR SERVICES WITH COMMUNITIES IN SCHOOLS DALLAS, INC. TO PERFORM CERTAIN SERVICES FOR THE CITY FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2004 AS SET FORTH AND DESCRIBED IN THE ATTACHED CONTRACT; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT ON BEHALF OF THE CITY; PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:

Section 1. The Contract for Services by and between the Town of Addison, Texas and Communities in Schools Dallas, Inc. for the fiscal year beginning October 1, 2003 and ending September 30, 2004, a true and correct copy of which Contract is attached hereto, is hereby approved.

Section 2. The City Manager is authorized and empowered to execute the said Contract for Services on behalf of the City and to take all steps necessary to carry out the terms thereof.

Section 3. This Resolution shall take effect from and after its date of adoption.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this _____ day of _____, 2003.

Mayor R. Scott Wheeler

ATTEST:

By: _____
Carmen Moran, City Secretary

APPROVED AS TO FORM:

By: _____
Ken Dippel, City Attorney

STATE OF TEXAS

§

CONTRACT FOR SERVICES

COUNTY OF DALLAS

§

§

This Contract for Services is made and entered into as of the 1st day of October, 2003 by and between the Town of Addison, Texas (the "City"), and Communities In Schools Dallas, Inc. ("Communities In Schools").

WITNESSETH:

WHEREAS, Communities In Schools is a private, non-profit organization established under the laws of the State of Texas for the purpose of providing academic support and social services for children at risk of dropping out of school in the Dallas region; and

WHEREAS, the success or failure of the purposes and objectives of Communities In Schools has a direct impact on the health and welfare of the citizens of the City; and

WHEREAS, the City has full power of local self government, has authority to contract with other persons, has authority to adopt regulations that are for the good government, peace, and order of the City, has authority to enforce laws reasonably necessary to protect the public health, and the services provided by Communities In Schools hereunder are in the public interest and are for, constitute and serve a public purpose in promoting the health and welfare of the citizens of the City.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements hereinafter set forth, the benefits flowing to each of the parties hereto, and other good and valuable consideration, the Town of Addison, Texas and Communities In Schools Dallas, Inc. do hereby contract, covenant and agree as follows:

I. TERM

The term of this Contract shall be for a period of one year from the 1st day of October, 2003 through the 30th day of September, 2004, except as otherwise provided for herein.

II. SERVICES

Communities In Schools covenants and agrees that it shall:

(a) establish and continue an on-going campus program at Janie Stark Elementary School in the Carrollton-Farmers Branch I.S.D. aimed at providing students with supportive guidance, academic enhancement opportunities, individual and scholastic enrichment activities, health and human service agency referrals, and parental involvement programs;

(b) assign two (2) professional staff to the Janie Stark Elementary School campus with bi-lingual language skills to guide in student development;

(c) conduct off-campus "home visits" with interested parents to acquaint them with enhanced student and parenting skills;

(d) coordinate with Addison apartment managers to hold neighborhood meetings to acquaint parents with Communities In Schools and its opportunities;

(e) bring the mobile service component of Communities In Schools to the Janie Stark Elementary School students;

(f) provide effective follow-up reporting to the City through quarterly financial and service reports to indicate the numbers served;

(g) provide an annual audit of financial condition to the City; and

(h) submit detailed quarterly financial statements and program results to the City within thirty (30) days after the end of the preceding quarter explaining all expenditures.

III. COMPENSATION

For the operation and provision of the services, projects and programs of Communities In Schools as described herein, the City shall pay Communities In Schools the sum of Forty Thousand and No/100 Dollars (\$40,000.00). Such sum shall be paid on or before January 9, 2004, provided Communities In Schools is not then in default of this Contract.

IV. RESPONSIBILITY; INDEMNIFICATION

Communities In Schools agrees to assume and does hereby assume all responsibility and liability for damages or injuries sustained by persons or property, whether real or asserted, by or from the performance of services performed and to be performed hereunder by Communities In Schools, its officials, officers, employees, agents, servants, invitees, contractors, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. Communities In Schools covenants and agrees to and shall defend, indemnify and hold harmless the City, its officials, officers, agents and employees (together, "Indemnified Persons") against, and hold the Indemnified Persons harmless from, any and all liability, losses, penalties, claims, lawsuits, actions, causes of action, costs, expenses, or fees (including, without limitation, attorney's fees), breach of contract, or any other harm for which any type of recovery (whether at law, in equity, or otherwise) is sought (together, "Claims"), resulting from or based upon, in whole or in part, any act omission of Communities In Schools, its officials, officers, employees, agents, servants, invitees, contractors, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, under or in connection with this Contract, the performance thereof by Communities In Schools, or any of its activities, and regardless of whether or not any such Claims is caused in part by any of the Indemnified Persons. Communities In Schools agrees to reimburse the City for all sums which the City may pay or may be paid on behalf of the City or which the City may be compelled to pay in settlement of any Claims, including without limitation any Claims under the provisions of any workers compensation law or other similar law. The provisions of this Section shall survive the termination or expiration of this Contract.

V. TERMINATION

This Contract may be canceled and terminated by either party at any time and for any reason upon giving at least thirty (30) days written notice of such cancellation and termination to the other party hereto. Such notice shall be sent certified mail, return receipt requested, and to the most recent address shown on the records of the party terminating the Contract. The thirty (30) day period shall commence upon deposit of the said notice in the United States mail and shall conclude at midnight of the 30th day thereafter. In the event of such cancellation and termination and if Communities In Schools has failed at the time of such cancellation and termination to provide all of the services set forth herein, Communities In Schools shall refund to the City that portion of funds paid to Communities In Schools under the terms of this Contract in accordance with the following: Prorata funding returned to the City by Communities In Schools shall be determined by dividing the amount paid by the City under this Contract by 365 (the "daily rate"), and then multiplying the daily rate by the number of days which would have remained in the term hereof but for the cancellation or termination. Upon payment or tender of such amount, all of the obligations of Communities In Schools and the City under this Contract shall be discharged and terminated (except as otherwise provided herein) and no action shall lie or accrue for additional benefit, consideration or value for or based upon the services performed under or pursuant to this Contract.

VI. CONFLICT OF INTEREST

(a) No officer or employee of the City shall have any interest or receive any benefit, direct or indirect, in this Contract or the proceeds thereof. This prohibition is not intended and should not be construed to preclude payment of expenses legitimately incurred by City officials in the conduct of the City's business. No officer or employee of Communities In Schools shall have any financial interest, direct or indirect, in this Contract or the proceeds thereof.

(b) For purposes of this section, "benefit" means anything reasonably regarded as an economic advantage, including benefit to any other person in whose welfare the beneficiary is interested, but does not include contributions or expenditures made and reported in accordance with any law.

VII. ACCOUNTING

Prior to adopting its annual budget, Communities in School shall submit for the City's review a budget showing the use of the City's funds provided pursuant to this Contract, and Communities in School shall make such periodic reports to the City, as provided for herein, listing the expenditures made by Communities in School from the funds provided by the City. The approval of Communities in School's annual budget creates a fiduciary duty in Communities in School with respect to the funds provided by the City under this Contract.

The funds paid to Communities in School pursuant to this Contract shall be maintained in a separate account established for that purpose and may not be commingled with any other money. Funds received hereunder from the City may be spent for day to day operations, supplies, salaries and other administrative costs provided that such costs are necessary for the promotion and encouragement of the purposes for which the funds may be used as described herein.

Communities In Schools shall maintain complete and accurate financial records of all of its revenues, including, without limitation, each expenditure of revenue received pursuant to this Contract. By the twenty-first (21st) day after the close of each quarter (beginning with the quarter ending December 31, 2003, with the last quarter ending September 30, 2004), Communities In Schools shall provide the City the following: (a) a detailed financial report for the previous quarter listing the expenditures made by Communities In Schools of the funds paid to Communities In Schools under this Contract; and (b) a year-to-date report of the expenditures made by Communities In Schools of the funds paid to Dance Council under this Contract (and if this Contract is terminated prior to its expiration, Communities In Schools shall provide such reports as set forth above for the period prior to the expiration for which reports have not been provided, and such obligation shall survive the termination hereof; and the obligation to provide the reports for the last quarter of this Contract shall survive the expiration of this Contract). On request of the City at any time, Communities In Schools shall make its records available for inspection and review by the City or its designated representative(s). Within ninety (90) days of the end of Communities In Schools' fiscal year, Communities In Schools shall provide the City with a financial statement signed by the Chairman of Communities In Schools' Board of Directors (or other person acceptable to the City) and audited by an independent Certified Public Accountant, setting forth Communities In Schools' income, expenses, assets and liabilities, and such obligation shall survive the termination or expiration of this Contract.

VIII. INDEPENDENT CONTRACTOR

In performing services under this Contract, the relationship between the City and Communities In Schools is that of independent contractor, and the City and Communities In Schools by the execution of this Contract do not change the independent status of Communities In Schools. No term or provision of this Contract or action by Communities In Schools in the performance of this Contract is intended nor shall be construed as making Communities In Schools the agent, servant or employee of the City, or to create an employer-employee relationship, a joint venture relationship, or a joint enterprise relationship.

IX. NON-ASSIGNABILITY

Communities In Schools may not and shall have no authority to assign, transfer, or otherwise convey by any means whatsoever this Contract or any of the rights, duties or responsibilities hereunder without obtaining the prior written approval of the City, and any attempted assignment, transfer, or other conveyance of this Contract without such approval shall be null and void and be cause for immediate termination of this Contract by the City.

X. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPRISE

Nothing contained in this Contract shall be deemed to constitute that the City and Communities In Schools are partners or joint venturers with each other, or shall be construed or be deemed to establish that their relationship constitutes, or that this Contract creates, a joint enterprise.

XI. NON-DISCRIMINATION

During the term of this Contract, Communities In Schools agrees that it shall not discriminate against any employee or applicant for employment because of race, age, color, sex or religion, ancestry, national origin, place of birth, or handicap.

XII. LEGAL COMPLIANCE; CONTRACT SUBJECT TO LAWS

Communities In Schools shall observe and abide by, and this Contract is subject to, all applicable federal, state, and local (including the City) laws, rules, regulations, and policies (including, without limitation, the Charter and Ordinances of the City), as the same currently exist or as they may be hereafter amended.

XIII. VENUE; GOVERNING LAW

In the event of any action under this Contract, venue for all causes of action shall be instituted and maintained in Dallas County, Texas. The parties agree that the laws of the State of Texas shall govern and apply to the interpretation, validity and enforcement of this Contract; and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this Contract.

XIV. COUNTERPARTS

This Contract may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

XV. NO WAIVER; RIGHTS CUMULATIVE

The failure by either party to exercise any right or power, or option given to it by this Contract, or to insist upon strict compliance with the terms of this Contract, shall not constitute a waiver of the terms and conditions of this Contract with respect to any other or subsequent breach thereof, nor a waiver by such party of its rights at any time thereafter to require exact and strict compliance with all the terms hereof. The rights or remedies under this Contract are cumulative to any other rights or remedies, which may be granted by law.

XVI. NOTICES

All notices, communications and reports, required or permitted under this Contract shall be personally delivered or mailed to the respective parties using certified mail, return receipt requested, postage prepaid, at the addresses shown below. The City and Communities In Schools agree to provide the other with written notification within five (5) days, if the address for notices, provided below, is changed. Notices by personal delivery shall be deemed delivered upon the date delivered; mailed notices shall be deemed communicated on the date shown on the return receipt. If no date is shown, the mailed notice shall be deemed communicated on the third (3rd) day after depositing the same in the United States mail.

The City's address:

Mario Canizares
Assistant to the City Manager
Town of Addison
5300 Belt Line Road
Dallas, Texas 75254

Communities In Schools' address:

2804 Swiss Avenue
Dallas, TX 75204
Attn: Executive Director

XVII. SEVERABILITY

The terms of this Contract are severable, and if any section, paragraph, clause, or other portion of this Contract shall be found to be illegal, unlawful, unconstitutional or void for any reason, the balance of the Contract shall remain in full force and effect and the parties shall be deemed to have contracted as if said section, paragraph, clause or portion had not been in the Contract initially.

XVIII. AUTHORITY TO EXECUTE CONTRACT

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Contract on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.

XIX. ENTIRE CONTRACT

This Contract represents the entire and integrated contract and agreement between the City and Communities In Schools and supersedes all prior negotiations, representations and/or agreements, either written or oral. This Contract may be amended only by written instrument signed by both the City and Communities In Schools.

IN WITNESS THEREOF, the parties hereto have caused this Contract to be signed by their proper corporate officers as first above specified, and have caused their proper corporate seal to be hereto affixed the day and year first above written.

TOWN OF ADDISON, TEXAS

**COMMUNITIES IN SCHOOLS
DALLAS, INC.**

By: _____
Ron Whitehead, City Manager

By: _____
Sandra Chavarria, President

ATTEST:

ATTEST:

By: _____
Carmen Moran, City Secretary

By: _____

(printed name)

Its: _____

Council Agenda Item: #2c**SUMMARY:**

To consider approval of the contracts for services between the Town of Addison and the non-profits agencies funded from the General Fund and Hotel Fund budgets. The agencies and the amounts were approved by the City Council and included in the adopted FY 2003/04 budget.

FINANCIAL IMPACT:

All contracts are fully funded within the General Fund and Hotel Fund budgets.

	General Fund	Hotel Fund
Budgeted Amount:	<u>\$82,500.00</u>	<u>\$20,100.00</u>
Cost:	<u>\$82,500.00</u>	<u>\$20,100.00</u>

BACKGROUND:

During the FY 2003/04 budget process, the City Council reviewed the following non-profit agencies and funding amounts for FY 2003/04. Attached are the contracts for the non-profits and minor changes have made to ensure consistency within the contracts and to reflect changes to performances and their dates as applicable.

General Fund:	Amount	Hotel Fund	Amount
Communities in Schools Dallas	\$40,000	Brookhaven College for the Arts	\$8,500
Senior Adult Services	\$15,000	Dance Council	\$6,600
Metrocrest Social Service Center	\$15,000	Repertory Company Theatre	\$5,000
H.O.P.E.	\$5,000		
The Family Place	\$5,000		
DFW International	\$2,500		
TOTAL	\$82,500	TOTAL	\$20,100

RECOMMENDATION:

It is recommended that the City Council approve the resolutions authorizing the City Manager to enter into contracts with the non-profits for the amounts listed above. These contracts shall be subject to final review and approval by the City Attorney to allow the flexibility to negotiate any minor changes as needed.

AGENCY	FY 2002/03 FUNDING LEVEL	FY 2003/04 FUNDING LEVEL
<i>GENERAL FUND:</i>		
Communities in Schools Dallas, Inc.	\$30,000	\$40,000
Senior Adult Services	\$15,000	\$15,000
Metrocrest Social Service Center +	\$15,000	\$15,000
Metrocrest Chamber of Commerce +	\$9,000	\$9,000
Special Care and Career Services	\$5,000	\$5,000
H.O.P.E.	\$5,000	\$5,000
The Family Place	\$5,000	\$5,000
DFW International *	\$0	\$2,500
Metrocrest Family Medical Clinic	\$0	\$0
SUBTOTAL	\$ 84,000	\$ 96,500
<i>HOTEL FUND:</i>		
WaterTower Theatre **	\$380,000	\$380,000
Texas Chamber Orchestra +	\$15,000	\$30,000
Brookhaven College Center for the Arts	\$8,500	\$8,500
Dance Council	\$6,700	\$6,600
Repertory Company Theatre	\$8,700	\$5,000
Nova Dancing Company (Barefoot Brigade) *	\$0	0
SUBTOTAL	\$ 418,900	\$ 430,100
GRAND TOTAL	\$ 502,900	\$ 526,600

* Indicates a first time request

** Request includes \$150,000 in potential Town "Matching Funds"

+ Indicates that the agency's funding amount was approved by City Council on 11/11/03

TOWN OF ADDISON, TEXAS

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING A CONTRACT FOR SERVICES WITH THE FAMILY PLACE TO PERFORM CERTAIN SERVICES FOR THE CITY FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2004 AS SET FORTH AND DESCRIBED IN THE ATTACHED CONTRACT; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT ON BEHALF OF THE CITY; PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:

Section 1. The Contract for Services by and between the Town of Addison, Texas and The Family Place for the fiscal year beginning October 1, 2003 and ending September 30, 2004, a true and correct copy of which Contract is attached hereto, is hereby approved.

Section 2. The City Manager is authorized and empowered to execute the said Contract for Services on behalf of the City and to take all steps necessary to carry out the terms thereof.

Section 3. This Resolution shall take effect from and after its date of adoption.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this _____ day of _____, 2003.

Mayor R. Scott Wheeler

ATTEST:

By: _____
Carmen Moran, City Secretary

APPROVED AS TO FORM:

By: _____
Ken Dippel, City Attorney

STATE OF TEXAS

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CONTRACT FOR SERVICES

COUNTY OF DALLAS

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This Contract for Services is made and entered into as of the 1st day of October, 2003 by and between the Town of Addison, Texas (the "City"), and The Family Place, Inc. ("The Family Place").

WITNESSETH:

WHEREAS, The Family Place is a private, non-profit organization established under the laws of the State of Texas for the purpose of providing counseling, outreach, referrals, education and protection services to victims of domestic violence; and

WHEREAS, the success or failure of The Family Place purposes and objectives has a direct impact on the health and welfare of the citizens of the City; and

WHEREAS, the City has full power of local self government, has authority to contract with other persons, has authority to adopt regulations that are for the good government, peace, and order of the City, has authority to enforce laws reasonably necessary to protect the public health, and the services provided by The Family Place hereunder are in the public interest and are for, constitute and serve a public purpose in promoting the health and welfare of the citizens of the City.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements hereinafter set forth, the benefits flowing to each of the parties hereto, and other good and valuable consideration, the Town of Addison, Texas and The Family Place do hereby contract, covenant and agree as follows:

I. TERM

The term of this contract and agreement shall be for a period of one year from the 1st day of October, 2003 through the 30th day of September, 2004, except as otherwise provided for herein.

II. SERVICES

The Family Place covenants and agrees that it shall:

(a) Establish a satellite facility in the Metrocrest area for the purpose of conducting counseling, outreach, referrals, public education, and protection services to victims of domestic violence through a variety of program services in the Addison, Carrollton, and Farmers Branch area;

(b) Coordinate with other area social outreach agencies such as Metrocrest Social Services to provide the functions described in paragraph (a) above. Such coordination shall include volunteer training for those volunteers (who desire and agree to be so trained) conducting referral

functions for the Metrocrest Social Services and any other groups employing volunteers for referral functions;

(c) Distribute to various media, brochures and public service announcements (“PSA”) to inform residents in the area of the services offered by The Family Place. Such an informational campaign shall include the following:

- radio public service announcements submitted to air in English and Spanish
- local and regional newspaper PSAs describing the Family Place services
- distribution of informational pamphlets to various community, civic, and social service organizations within the Metrocrest
- speaking engagements at various community, civic, and social service organizations to also include, when arranged by the City, an annual presentation to the Addison apartment managers forum as an avenue to disseminate public information within the apartment communities;

(d) Include an Addison representative on the Family Place Metrocrest Advisory Board to enhance communication and coordination of the agencies efforts in Addison and the Metrocrest;

(e) Seek the assistance of volunteers in conducting all annual fundraising events to raise awareness of the Family Place and its services. Such special events shall be rotated through Addison, Carrollton, and Farmers Branch to serve as host sites;

(f) Present a mid-year report to the Addison City Council on the progress and status of services provided at the new Metrocrest satellite facility in April of 2004, and continue quarterly status reporting to the City in a mutually agreed upon form;

(g) Provide a copy of The Family Place’s annual audit of financial condition to the City; and

(h) Submit detailed quarterly financial statements and program results to the City within thirty (30) days after the end of the preceding quarter explaining all expenditures.

III. COMPENSATION

For the operation and provision of the services, projects and programs of The Family Place as described herein, the City shall pay The Family Place the sum of Five Thousand and No/100 Dollars (\$5,000.00). Such sum shall be paid on or before January 9, 2004, provided The Family Place is not then in default of this Contract.

IV. RESPONSIBILITY; INDEMNIFICATION

The Family Place agrees to assume and does hereby assume all responsibility and liability for damages or injuries sustained by persons or property, whether real or asserted, by or from the performance of services performed and to be performed hereunder by The Family Place, its officials, officers, employees, agents, servants, invitees, contractors, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. The Family Place covenants and agrees to and shall defend, indemnify and hold harmless the City, its officials, officers, agents and employees (together, "Indemnified Persons") against, and hold the Indemnified Persons harmless from, any and all liability, losses, penalties, claims, lawsuits, actions, causes of action, costs, expenses, or fees (including, without limitation, attorney's fees), breach of contract, or any other harm for which any type of recovery (whether at law, in equity, or otherwise) is sought (together, "Claims"), resulting from or based upon, in whole or in part, any act omission of The Family Place, its officials, officers, employees, agents, servants, invitees, contractors, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, under or in connection with this Contract, the performance thereof by The Family Place, or any of its activities, and regardless of whether or not any such Claims is caused in part by any of the Indemnified Persons. The Family Place agrees to reimburse the City for all sums which the City may pay or may be paid on behalf of the City or which the City may be compelled to pay in settlement of any Claims, including without limitation any Claims under the provisions of any workers compensation law or other similar law. The provisions of this Section shall survive the termination or expiration of this Contract.

V. TERMINATION

This Contract may be canceled and terminated by either party at any time and for any reason upon giving at least thirty (30) days written notice of such cancellation and termination to the other party hereto. Such notice shall be sent certified mail, return receipt requested, and to the most recent address shown on the records of the party terminating the Contract. The thirty (30) day period shall commence upon deposit of the said notice in the United States mail and shall conclude at midnight of the 30th day thereafter. In the event of such cancellation and termination and if The Family Place has failed at the time of such cancellation and termination to provide all of the services set forth herein, The Family Place shall refund to the City that portion of funds paid to The Family Place under the terms of this Contract in accordance with the following: Prorata funding returned to the City by The Family Place shall be determined by dividing the amount paid by the City under this Contract by 365 (the "daily rate"), and then multiplying the daily rate by the number of days which would have remained in the term hereof but for the cancellation or termination. Upon payment or tender of such amount, all of the obligations of The Family Place and the City under this Contract shall be discharged and terminated (except as otherwise provided herein) and no action shall lie or accrue for additional benefit, consideration or value for or based upon the services performed under or pursuant to this Contract.

VI. CONFLICT OF INTEREST

(a) No officer or employee of the City shall have any interest or receive any benefit, direct or indirect, in this Contract or the proceeds thereof. This prohibition is not intended and should not be construed to preclude payment of expenses legitimately incurred by City officials in the conduct of the City's business. No officer or employee of The Family Place shall have any financial interest, direct or indirect, in this Contract or the proceeds thereof.

(b) For purposes of this section, "benefit" means anything reasonably regarded as an economic advantage, including benefit to any other person in whose welfare the beneficiary is interested, but does not include contributions or expenditures made and reported in accordance with any law.

VII. ACCOUNTING

Prior to adopting its annual budget, The Family Place shall submit for the City's review a budget showing the use of the City's funds provided pursuant to this Contract, and The Family Place shall make such periodic reports to the City, as provided for herein, listing the expenditures made by The Family Place from the funds provided by the City. The approval of The Family Place's annual budget creates a fiduciary duty in The Family Place with respect to the funds provided by the City under this Contract.

The funds paid to The Family Place pursuant to this Contract shall be maintained in a separate account established for that purpose and may not be commingled with any other money. Funds received hereunder from the City may be spent for day to day operations, supplies, salaries and other administrative costs provided that such costs are necessary for the promotion and encouragement of the purposes for which the funds may be used as described herein.

The Family Place shall maintain complete and accurate financial records of all of its revenues, including, without limitation, each expenditure of revenue received pursuant to this Contract. By the twenty-first (21st) day after the close of each quarter (beginning with the quarter ending December 31, 2003, with the last quarter ending September 30, 2004), The Family Place shall provide the City the following: (a) a detailed financial report for the previous quarter listing the expenditures made by The Family Place of the funds paid to The Family Place under this Contract; and (b) a year-to-date report of the expenditures made by The Family Place of the funds paid to Dance Council under this Contract (and if this Contract is terminated prior to its expiration, The Family Place shall provide such reports as set forth above for the period prior to the expiration for which reports have not been provided, and such obligation shall survive the termination hereof; and the obligation to provide the reports for the last quarter of this Contract shall survive the expiration of this Contract). On request of the City at any time, The Family Place shall make its records available for inspection and review by the City or its designated representative(s). Within ninety (90) days of the end of The Family Place's fiscal year, The Family Place shall provide the City with a financial statement signed by the Chairman of The Family Place's Board of Directors (or other person acceptable to the City) and audited by an independent Certified Public Accountant, setting forth The Family Place's income, expenses, assets and liabilities, and such obligation shall survive the termination or expiration of this Contract.

VIII. INDEPENDENT CONTRACTOR

In performing services under this Contract, the relationship between the City and The Family Place is that of independent contractor, and the City and The Family Place by the execution of this Contract do not change the independent status of The Family Place. No term or provision of this Contract or action by The Family Place in the performance of this Contract is intended nor shall be construed as making The Family Place the agent, servant or employee of the City, or to create an employer-employee relationship, a joint venture relationship, or a joint enterprise relationship.

IX. NON-ASSIGNABILITY

The Family Place may not and shall have no authority to assign, transfer, or otherwise convey by any means whatsoever this Contract or any of the rights, duties or responsibilities hereunder without obtaining the prior written approval of the City, and any attempted assignment, transfer, or other conveyance of this Contract without such approval shall be null and void and be cause for immediate termination of this Contract by the City.

X. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPIRS

Nothing contained in this Contract shall be deemed to constitute that the City and The Family Place are partners or joint venturers with each other, or shall be construed or be deemed to establish that their relationship constitutes, or that this Contract creates, a joint enterprise.

XI. NON-DISCRIMINATION

During the term of this Contract, The Family Place agrees that it shall not discriminate against any employee or applicant for employment because of race, age, color, sex or religion, ancestry, national origin, place of birth, or handicap.

XII. LEGAL COMPLIANCE; CONTRACT SUBJECT TO LAWS

The Family Place shall observe and abide by, and this Contract is subject to, all applicable federal, state, and local (including the City) laws, rules, regulations, and policies (including, without limitation, the Charter and Ordinances of the City), as the same currently exist or as they may be hereafter amended.

XIII. VENUE; GOVERNING LAW

In the event of any action under this Contract, venue for all causes of action shall be instituted and maintained in Dallas County, Texas. The parties agree that the laws of the State of Texas shall govern and apply to the interpretation, validity and enforcement of this Contract; and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this Contract.

XIV. COUNTERPARTS

This Contract may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

XV. NO WAIVER; RIGHTS CUMULATIVE

The failure by either party to exercise any right or power, or option given to it by this Contract, or to insist upon strict compliance with the terms of this Contract, shall not constitute a waiver of the terms and conditions of this Contract with respect to any other or subsequent breach thereof, nor a waiver by such party of its rights at any time thereafter to require exact and strict compliance with all the terms hereof. The rights or remedies under this Contract are cumulative to any other rights or remedies, which may be granted by law.

XVI. NOTICES

All notices, communications and reports, required or permitted under this Contract shall be personally delivered or mailed to the respective parties using certified mail, return receipt requested, postage prepaid, at the addresses shown below. The City and The Family Place agree to provide the other with written notification within five (5) days, if the address for notices, provided below, is changed. Notices by personal delivery shall be deemed delivered upon the date delivered; mailed notices shall be deemed communicated on the date shown on the return receipt. If no date is shown, the mailed notice shall be deemed communicated on the third (3rd) day after depositing the same in the United States mail.

The City's address:

Mario Canizares
Assistant to the City Manager
Town of Addison
5300 Belt Line Road
Dallas, Texas 75254

The Family Place's address:

Attn: _____

XVII. SEVERABILITY

The terms of this Contract are severable, and if any section, paragraph, clause, or other portion of this Contract shall be found to be illegal, unlawful, unconstitutional or void for any reason, the balance of the Contract shall remain in full force and effect and the parties shall be deemed to have contracted as if said section, paragraph, clause or portion had not been in the Contract initially.

XVIII. AUTHORITY TO EXECUTE CONTRACT

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Contract on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.

XIX. ENTIRE CONTRACT

This Contract represents the entire and integrated contract and agreement between the City and The Family Place and supersedes all prior negotiations, representations and/or agreements, either written or oral. This Contract may be amended only by written instrument signed by both the City and The Family Place

IN WITNESS THEREOF, the parties hereto have caused this Contract to be signed by their proper corporate officers as first above specified, and have caused their proper corporate seal to be hereto affixed the day and year first above written.

TOWN OF ADDISON, TEXAS

THE FAMILY PLACE, INC.

By: _____
Ron Whitehead, City Manager

By: _____

(printed name)

Its: _____

ATTEST:

By: _____
Carmen Moran, City Secretary

Council Agenda Item: #2d**SUMMARY:**

To consider approval of the contracts for services between the Town of Addison and the non-profits agencies funded from the General Fund and Hotel Fund budgets. The agencies and the amounts were approved by the City Council and included in the adopted FY 2003/04 budget.

FINANCIAL IMPACT:

All contracts are fully funded within the General Fund and Hotel Fund budgets.

	General Fund	Hotel Fund
Budgeted Amount:	<u>\$82,500.00</u>	<u>\$20,100.00</u>
Cost:	<u>\$82,500.00</u>	<u>\$20,100.00</u>

BACKGROUND:

During the FY 2003/04 budget process, the City Council reviewed the following non-profit agencies and funding amounts for FY 2003/04. Attached are the contracts for the non-profits and minor changes have made to ensure consistency within the contracts and to reflect changes to performances and their dates as applicable.

General Fund:	Amount	Hotel Fund	Amount
Communities in Schools Dallas	\$40,000	Brookhaven College for the Arts	\$8,500
Senior Adult Services	\$15,000	Dance Council	\$6,600
Metrocrest Social Service Center	\$15,000	Repertory Company Theatre	\$5,000
H.O.P.E.	\$5,000		
The Family Place	\$5,000		
DFW International	\$2,500		
TOTAL	\$82,500	TOTAL	\$20,100

RECOMMENDATION:

It is recommended that the City Council approve the resolutions authorizing the City Manager to enter into contracts with the non-profits for the amounts listed above. These contracts shall be subject to final review and approval by the City Attorney to allow the flexibility to negotiate any minor changes as needed.

AGENCY	FY 2002/03 FUNDING LEVEL	FY 2003/04 FUNDING LEVEL
<i>GENERAL FUND:</i>		
Communities in Schools Dallas, Inc.	\$30,000	\$40,000
Senior Adult Services	\$15,000	\$15,000
Metrocrest Social Service Center +	\$15,000	\$15,000
Metrocrest Chamber of Commerce +	\$9,000	\$9,000
Special Care and Career Services	\$5,000	\$5,000
H.O.P.E.	\$5,000	\$5,000
The Family Place	\$5,000	\$5,000
DFW International *	\$0	\$2,500
Metrocrest Family Medical Clinic	\$0	\$0
SUBTOTAL	\$ 84,000	\$ 96,500
 <i>HOTEL FUND:</i>		
WaterTower Theatre **	\$380,000	\$380,000
Texas Chamber Orchestra +	\$15,000	\$30,000
Brookhaven College Center for the Arts	\$8,500	\$8,500
Dance Council	\$6,700	\$6,600
Repertory Company Theatre	\$8,700	\$5,000
Nova Dancing Company (Barefoot Brigade) *	\$0	0
SUBTOTAL	\$ 418,900	\$ 430,100
 GRAND TOTAL	 \$ 502,900	 \$ 526,600

* Indicates a first time request

** Request includes \$150,000 in potential Town "Matching Funds"

+ Indicates that the agency's funding amount was approved by City Council on 11/11/03

TOWN OF ADDISON, TEXAS

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING A CONTRACT FOR SERVICES WITH METROCREST SOCIAL SERVICE CENTER TO PERFORM CERTAIN SERVICES FOR THE CITY FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2004 AS SET FORTH AND DESCRIBED IN THE ATTACHED CONTRACT; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT ON BEHALF OF THE CITY; PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:

Section 1. The Contract for Services by and between the Town of Addison, Texas and Metrocrest Social Service Center for the fiscal year beginning October 1, 2003 and ending September 30, 2004, a true and correct copy of which Contract is attached hereto, is hereby approved.

Section 2. The City Manager is authorized and empowered to execute the said Contract for Services on behalf of the City and to take all steps necessary to carry out the terms thereof.

Section 3. This Resolution shall take effect from and after its date of adoption.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this _____ day of _____, 2003.

Mayor R. Scott Wheeler

ATTEST:

By: _____
Carmen Moran, City Secretary

APPROVED AS TO FORM:

By: _____
Ken Dippel, City Attorney

STATE OF TEXAS

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CONTRACT FOR SERVICES

COUNTY OF DALLAS

This Contract for Services is made and entered into as of the 1st day of October, 2003 by and between the Town of Addison, Texas (the "City") and Metrocrest Social Service Center ("Metrocrest").

WITNESSETH:

WHEREAS, Metrocrest is a private, non-profit organization established under the laws of the State of Texas for the purpose of providing information, referral and short term emergency assistance to the citizens within the City; and

WHEREAS, the success or failure of Metrocrest's purposes and objectives has a direct impact on the health, comfort, and welfare of the citizens of the City; and

WHEREAS, the City has full power of local self government, has authority to contract with other persons, has authority to adopt regulations that are for the good government, peace, and order of the City, has authority to enforce laws reasonably necessary to protect the public health, and the services provided by Metrocrest hereunder are in the public interest and are for, constitute and serve a public purpose in promoting the health and welfare of the citizens of the City.

NOW, THEREFORE, in consideration of all mutual covenants and agreements hereinafter set forth, the parties do hereby covenant and agree as follows:

I. TERM

The term of this contract and agreement shall be for a period of one year from the 1st day of October, 2003 through the 30th day of September, 2004, except as otherwise provided for herein.

II. SERVICES

Metrocrest covenants and agrees that it shall:

(a) Provide direct material assistance and short term emergency assistance to residents and citizens of the City of which includes:

- 1) Rent
- 2) Utilities
- 3) Food
- 4) Clothing
- 5) Prescription Drugs
- 6) Transportation Services
- 7) Other

(b) Provide information and referral on health and social service issues to residents and citizens of the City of which includes:

- 1) Employment Assistance
- 2) Health and Social Services Referrals
- 3) Support Group Information

(c) Provide indirect assistance to residents and citizens for the City of which includes:

- (1) Collaboration with others in the community for awareness of need and maximum utilization of resources
- (2) Community education about issues, needs, and resources
- (3) Inquiry into the causes of identified problems
- (4) Participation in the development of plans and strategies to address the causes
- (5) Provisions of volunteer opportunities for community-wide involvement in the programs of the Metrocrest Social Service Center.

(d) Submit detailed quarterly financial statements and program results to the City within thirty (30) days after the end of the preceding quarter explaining all expenditures.

III. COMPENSATION

For the operation and provision of the services, projects and programs of Metrocrest as described herein, the City shall pay Metrocrest the sum of Fifteen Thousand and No/100 Dollars (\$15,000.00). Such sum shall be paid on or before January 9, 2004, provided Metrocrest is not then in default of this Contract.

IV. INDEMNIFICATION

Metrocrest agrees to assume and does hereby assume all responsibility and liability for damages or injuries sustained by persons or property, whether real or asserted, by or from the performance of services performed and to be performed hereunder by Metrocrest, its officials, officers, employees, agents, servants, invitees, contractors, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. Metrocrest covenants and agrees to and shall defend, indemnify and hold harmless the City, its officials, officers, agents and employees (together, "Indemnified Persons") against, and hold the Indemnified Persons harmless from, any and all liability, losses, penalties, claims, lawsuits, actions, causes of action, costs, expenses, or fees (including, without limitation, attorney's fees), breach of contract, or any other harm for which any type of recovery (whether at law, in equity, or otherwise) is sought (together, "Claims"), resulting from or based upon, in whole or in part, any act omission of Metrocrest, its officials, officers, employees, agents, servants, invitees, contractors, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, under or in connection with this Contract, the performance thereof by Metrocrest, or any of its activities, and regardless of whether or not any such Claims is caused in part by any of the Indemnified Persons. Metrocrest agrees to reimburse the City for all sums which the City may pay or may be paid on behalf of the City or which the City may be compelled to pay in settlement of any Claims, including without limitation any Claims under the provisions of any workers compensation law or other similar law. The provisions of this Section shall survive the termination or expiration of this Contract.

V. TERMINATION

This Contract may be canceled and terminated by either party at any time and for any reason upon giving at least thirty (30) days written notice of such cancellation and termination to the other party hereto. Such notice shall be sent certified mail, return receipt requested, and to the most recent address shown on the records of the party terminating the Contract. The thirty (30) day period shall commence upon deposit of the said notice in the United States mail and shall conclude at midnight of the 30th day thereafter. In the event of such cancellation and termination and if Metrocrest has failed at the time of such cancellation and termination to provide all of the services set forth herein, Metrocrest shall refund to the City that portion of funds paid to Metrocrest under the terms of this Contract in accordance with the following: Prorata funding returned to the City by Metrocrest shall be determined by dividing the amount paid by the City under this Contract by 365 (the "daily rate"), and then multiplying the daily rate by the number of days which would have remained in the term hereof but for the cancellation or termination. Upon payment or tender of such amount, all of the obligations of Metrocrest and the City under this Contract shall be discharged and terminated (except as otherwise provided herein) and no action shall lie or accrue for additional benefit, consideration or value for or based upon the services performed under or pursuant to this Contract.

VI. CONFLICT OF INTEREST

(a) No officer or employee of the City shall have any interest or receive any benefit, direct or indirect, in this Contract or the proceeds thereof. This prohibition is not intended and should not be construed to preclude payment of expenses legitimately incurred by City officials in the conduct of the City's business. No officer or employee of Metrocrest shall have any financial interest, direct or indirect, in this Contract or the proceeds thereof.

(b) For purposes of this section, "benefit" means anything reasonably regarded as an economic advantage, including benefit to any other person in whose welfare the beneficiary is interested, but does not include contributions or expenditures made and reported in accordance with any law.

VII. ACCOUNTING

Prior to adopting its annual budget, Metrocrest shall submit for the City's review a budget showing the use of the City's funds provided pursuant to this Contract, and Metrocrest shall make such periodic reports to the City, as provided for herein, listing the expenditures made by Metrocrest from the funds provided by the City. The approval of Metrocrest' annual budget creates a fiduciary duty in Metrocrest with respect to the funds provided by the City under this Contract.

The funds paid to Metrocrest pursuant to this Contract shall be maintained in a separate account established for that purpose and may not be commingled with any other money. Funds received hereunder from the City may be spent for day to day operations, supplies, salaries and other administrative costs provided that such costs are necessary for the promotion and encouragement of the purposes for which the funds may be used as described herein.

Metrocrest shall maintain complete and accurate financial records of all of its revenues, including, without limitation, each expenditure of revenue received pursuant to this Contract. By

the twenty-first (21st) day after the close of each quarter (beginning with the quarter ending December 31, 2003, with the last quarter ending September 30, 2004), Metrocrest shall provide the City the following: (a) a detailed financial report for the previous quarter listing the expenditures made by Metrocrest of the funds paid to Metrocrest under this Contract; and (b) a year-to-date report of the expenditures made by Metrocrest of the funds paid to Dance Council under this Contract (and if this Contract is terminated prior to its expiration, Metrocrest shall provide such reports as set forth above for the period prior to the expiration for which reports have not been provided, and such obligation shall survive the termination hereof; and the obligation to provide the reports for the last quarter of this Contract shall survive the expiration of this Contract). On request of the City at any time, Metrocrest shall make its records available for inspection and review by the City or its designated representative(s). Within ninety (90) days of the end of Metrocrest's fiscal year, Metrocrest shall provide the City with a financial statement signed by the Chairman of Metrocrest's Board of Directors (or other person acceptable to the City) and audited by an independent Certified Public Accountant, setting forth Metrocrest's income, expenses, assets and liabilities, and such obligation shall survive the termination or expiration of this Contract.

VIII. INDEPENDENT CONTRACTOR

In performing services under this Contract, the relationship between the City and Metrocrest is that of independent contractor, and the City and Metrocrest by the execution of this Contract do not change the independent status of Metrocrest. No term or provision of this Contract or action by Metrocrest in the performance of this Contract is intended nor shall be construed as making Metrocrest the agent, servant or employee of the City, or to create an employer-employee relationship, a joint venture relationship, or a joint enterprise relationship.

IX. NON-ASSIGNABILITY

Metrocrest may not and shall have no authority to assign, transfer, or otherwise convey by any means whatsoever this Contract or any of the rights, duties or responsibilities hereunder without obtaining the prior written approval of the City, and any attempted assignment, transfer, or other conveyance of this Contract without such approval shall be null and void and be cause for immediate termination of this Contract by the City.

X. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPRISE

Nothing contained in this Contract shall be deemed to constitute that the City and Metrocrest are partners or joint venturers with each other, or shall be construed or be deemed to establish that their relationship constitutes, or that this Contract creates, a joint enterprise.

XI. NON-DISCRIMINATION

During the term of this Contract, Metrocrest agrees that it shall not discriminate against any employee or applicant for employment because of race, age, color, sex or religion, ancestry, national origin, place of birth, or handicap.

XII. LEGAL COMPLIANCE; CONTRACT SUBJECT TO LAWS

Metrocrest shall observe and abide by, and this Contract is subject to, all applicable federal, state, and local (including the City) laws, rules, regulations, and policies (including,

without limitation, the Charter and Ordinances of the City), as the same currently exist or as they may be hereafter amended.

XIII. VENUE; GOVERNING LAW

In the event of any action under this Contract, venue for all causes of action shall be instituted and maintained in Dallas County, Texas. The parties agree that the laws of the State of Texas shall govern and apply to the interpretation, validity and enforcement of this Contract; and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this Contract.

XIV. COUNTERPARTS

This Contract may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

XV. NO WAIVER; RIGHTS CUMULATIVE

The failure by either party to exercise any right or power, or option given to it by this Contract, or to insist upon strict compliance with the terms of this Contract, shall not constitute a waiver of the terms and conditions of this Contract with respect to any other or subsequent breach thereof, nor a waiver by such party of its rights at any time thereafter to require exact and strict compliance with all the terms hereof. The rights or remedies under this Contract are cumulative to any other rights or remedies, which may be granted by law.

XVI. NOTICES

All notices, communications and reports, required or permitted under this Contract shall be personally delivered or mailed to the respective parties using certified mail, return receipt requested, postage prepaid, at the addresses shown below. The City and Metrocrest agree to provide the other with written notification within five (5) days, if the address for notices, provided below, is changed. Notices by personal delivery shall be deemed delivered upon the date delivered; mailed notices shall be deemed communicated on the date shown on the return receipt. If no date is shown, the mailed notice shall be deemed communicated on the third (3rd) day after depositing the same in the United States mail.

The City's address:

Mario Canizares
Assistant to the City Manager
Town of Addison
5300 Belt Line Road
Dallas, Texas 75254

Metrocrest' address:

Attn: _____

XVII. SEVERABILITY

The terms of this Contract are severable, and if any section, paragraph, clause, or other portion of this Contract shall be found to be illegal, unlawful, unconstitutional or void for any reason, the balance of the Contract shall remain in full force and effect and the parties shall be deemed to have contracted as if said section, paragraph, clause or portion had not been in the Contract initially.

XVIII. AUTHORITY TO EXECUTE CONTRACT

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Contract on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.

XIX. ENTIRE AGREEMENT

This Contract represents the entire and integrated contract and agreement between the City and Metrocrest and supersedes all prior negotiations, representations and/or agreements, either written or oral. This Contract may be amended only by written instrument signed by both the City and Metrocrest

IN WITNESS THEREOF, the parties hereto have caused this Contract to be signed by their proper corporate officers as first above specified, and have caused their proper corporate seal to be hereto affixed the day and year first above written.

TOWN OF ADDISON, TEXAS

By: _____
Ron Whitehead, City Manager

ATTEST:

By: _____
Carmen Moran, City Secretary

METROCREST SOCIAL SERVICE CENTER

By: _____

(printed name)

Its: _____

ATTEST:

By: _____

(printed name)

Its: _____

Council Agenda Item: #2e**SUMMARY:**

To consider approval of the contracts for services between the Town of Addison and the non-profits agencies funded from the General Fund and Hotel Fund budgets. The agencies and the amounts were approved by the City Council and included in the adopted FY 2003/04 budget.

FINANCIAL IMPACT:

All contracts are fully funded within the General Fund and Hotel Fund budgets.

	General Fund	Hotel Fund
Budgeted Amount:	<u>\$82,500.00</u>	<u>\$20,100.00</u>
Cost:	<u>\$82,500.00</u>	<u>\$20,100.00</u>

BACKGROUND:

During the FY 2003/04 budget process, the City Council reviewed the following non-profit agencies and funding amounts for FY 2003/04. Attached are the contracts for the non-profits and minor changes have made to ensure consistency within the contracts and to reflect changes to performances and their dates as applicable.

General Fund:	Amount	Hotel Fund	Amount
Communities in Schools Dallas	\$40,000	Brookhaven College for the Arts	\$8,500
Senior Adult Services	\$15,000	Dance Council	\$6,600
Metrocrest Social Service Center	\$15,000	Repertory Company Theatre	\$5,000
H.O.P.E.	\$5,000		
The Family Place	\$5,000		
DFW International	\$2,500		
TOTAL	\$82,500	TOTAL	\$20,100

RECOMMENDATION:

It is recommended that the City Council approve the resolutions authorizing the City Manager to enter into contracts with the non-profits for the amounts listed above. These contracts shall be subject to final review and approval by the City Attorney to allow the flexibility to negotiate any minor changes as needed.

AGENCY	FY 2002/03 FUNDING LEVEL	FY 2003/04 FUNDING LEVEL
<i>GENERAL FUND:</i>		
Communities in Schools Dallas, Inc.	\$30,000	\$40,000
Senior Adult Services	\$15,000	\$15,000
Metrocrest Social Service Center +	\$15,000	\$15,000
Metrocrest Chamber of Commerce +	\$9,000	\$9,000
Special Care and Career Services	\$5,000	\$5,000
H.O.P.E.	\$5,000	\$5,000
The Family Place	\$5,000	\$5,000
DFW International *	\$0	\$2,500
Metrocrest Family Medical Clinic	\$0	\$0
SUBTOTAL	\$ 84,000	\$ 96,500
<i>HOTEL FUND:</i>		
WaterTower Theatre **	\$380,000	\$380,000
Texas Chamber Orchestra +	\$15,000	\$30,000
Brookhaven College Center for the Arts	\$8,500	\$8,500
Dance Council	\$6,700	\$6,600
Repertory Company Theatre	\$8,700	\$5,000
Nova Dancing Company (Barefoot Brigade) *	\$0	0
SUBTOTAL	\$ 418,900	\$ 430,100
GRAND TOTAL	\$ 502,900	\$ 526,600

* Indicates a first time request

** Request includes \$150,000 in potential Town "Matching Funds"

+ Indicates that the agency's funding amount was approved by City Council on 11/11/03

TOWN OF ADDISON, TEXAS

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING A CONTRACT FOR SERVICES WITH THE DANCE COUNCIL TO PERFORM CERTAIN SERVICES FOR THE CITY FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2004 AS SET FORTH AND DESCRIBED IN THE ATTACHED CONTRACT; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT ON BEHALF OF THE CITY; PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:

Section 1. The Contract for Services by and between the Town of Addison, Texas and the Dance Council for the fiscal year beginning October 1, 2003 and ending September 30, 2004, a true and correct copy of which Contract is attached hereto, is hereby approved.

Section 2. The City Manager is authorized and empowered to execute the said Contract for Services on behalf of the City and to take all steps necessary to carry out the terms thereof.

Section 3. This Resolution shall take effect from and after its date of adoption.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this _____ day of _____, 2003.

Mayor R. Scott Wheeler

ATTEST:

By: _____
Carmen Moran, City Secretary

APPROVED AS TO FORM:

By: _____
Ken Dippel, City Attorney

STATE OF TEXAS

§

CONTRACT FOR SERVICES

COUNTY OF DALLAS

§

§

This Contract for Services is made and entered into as of the 1st day of October, 2003 by and between the Town of Addison, Texas (the "City") and the Dance Council (the "Dance Council").

WITNESSETH:

WHEREAS, the Dance Council is a private, non-profit organization established under the laws of the State of Texas for the purpose of promoting and supporting dance in North Texas, including the Town of Addison, and providing artistic, educational, and cultural opportunities to people of all ages, races and abilities; and

WHEREAS, the Dance Council's productions and work attract tourists to and encourages tourism in the City, and the City has an interest in attracting such tourists and promoting tourism to the area in order to receive the economic benefits associated therewith; and

WHEREAS, it is the City's desire to encourage and promote the arts, including dance; and

WHEREAS, the City is authorized to expend revenues from its hotel occupancy tax for the encouragement, promotion, improvement, and application of the arts, including, without limitation, dance, and desires to encourage and promote the arts (including dance) through the execution of this Contract for Services.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements hereinafter set forth, the benefits flowing to each of the parties hereto, and other good and valuable consideration, the Town of Addison, Texas and the Dance Council do hereby contract, covenant and agree as follows:

I. TERM

The term of this contract and agreement shall be for a period of one year from the 1st day of October, 2003 through the 30th day of September, 2004, except as otherwise provided for herein.

II. SERVICES

The Dance Council shall provide the following services to the City:

(a) Provide a program entitled "Taste Dance: Addison Style". This program shall be a four part series of lecture/demonstrations on dance to be presented at the Water Tower Theatre for two consecutive weekends beginning August 2004, on dates and at times to be decided.

Dance themes addressed in the lecture/demonstrations shall include the following or items like the following:

TASTE DANCE: MIDDLE EASTERN DANCE

Led by Isis, Artistic Director Isis and the Star Dancers, Colleyville. Emphasis is on the style and history of Middle Eastern dance.

TASTE DANCE: FIERY FAMENCO

Led by Artistic Director and Founder Daniel de Cordoba of *Daniel de Cordoba Bailes Espanoles*.

TASTE DANCE: IRRISISTIBLE IRISH

Hibernia School of Irish Dance led by Erin Maureen Reid, TCRG (certified step dance and ceili dance instructor by the Commission of Irish Dance in Dublin Ireland.

TASTE DANCE: SWINGIN' SWING

An interactive event led by the Dallas Swing Dance Society.

(b) The inclusion of the "Taste Dance: Addison Style" program on a series of postcards and the "Taste Dance: Addison Style" brochure. The Dance Council shall contact the City regarding the details of those postcards.

(c) The inclusion of the Addison logo on the Dance Council web site (www.thedancecouncil.org) or any other web site of the Dance Council. The Dance Council shall contact the City regarding the details of including the Addison logo on the web site.

(d) Provide a banner sign of the City at each Dance Council event which takes place in the City (with a banner sign to be provided by the City).

(e) Provide recognition from the stage at all Dance Council events (including Dance for the Planet, National Tap Dance Celebration, The Dallas Morning News Dance Festival, The Legacy Awards, and Taste Dance: Addison Style).

(f) Submit detailed quarterly financial statements and program results to the City within thirty (30) days after the end of the preceding quarter listing the expenditures made by the Dance Council with the revenues received pursuant to this Contract.

III. COMPENSATION

For the operation and provision of the services, projects and programs of the Dance Council as described herein, the City shall pay the Dance Council the sum of Six Thousand Six Hundred and No/100 Dollars (\$6,600.00). Such sum shall be paid on or before April 9, 2004, provided Dance Council is not then in default of this Contract.

IV. INDEMNIFICATION

Dance Council agrees to assume and does hereby assume all responsibility and liability for damages or injuries sustained by persons or property, whether real or asserted, by or from the performance of services performed and to be performed hereunder by Dance Council, its officials, officers, employees, agents, servants, invitees, contractors, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. Dance Council covenants and agrees to and shall defend, indemnify and hold harmless the City, its officials, officers, agents and employees (together, "Indemnified Persons") against, and hold the Indemnified Persons harmless from, any and all liability, losses, penalties, claims, lawsuits, actions, causes of action, costs, expenses, or fees (including, without limitation, attorney's fees), breach of contract, or any other harm for which any type of recovery (whether at law, in equity, or otherwise) is sought (together, "Claims"), resulting from or based upon, in whole or in part, any act omission of Dance Council, its officials, officers, employees, agents, servants, invitees, contractors, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, under or in connection with this Contract, the performance thereof by Dance Council, or any of its activities, and regardless of whether or not any such Claims is caused in part by any of the Indemnified Persons. Dance Council agrees to reimburse the City for all sums which the City may pay or may be paid on behalf of the City or which the City may be compelled to pay in settlement of any Claims, including without limitation any Claims under the provisions of any workers compensation law or other similar law. The provisions of this Section shall survive the termination or expiration of this Contract.

V. TERMINATION

This Contract may be canceled and terminated by either party at any time and for any reason upon giving at least thirty (30) days written notice of such cancellation and termination to the other party hereto. Such notice shall be sent certified mail, return receipt requested, and to the most recent address shown on the records of the party terminating the Contract. The thirty (30) day period shall commence upon deposit of the said notice in the United States mail and shall conclude at midnight of the 30th day thereafter. In the event of such cancellation and termination and if Dance Council has failed at the time of such cancellation and termination to provide all of the services set forth herein, Dance Council shall refund to the City that portion of funds paid to Dance Council under the terms of this Contract in accordance with the following: Prorata funding returned to the City by Dance Council shall be determined by dividing the amount paid by the City under this Contract by 365 (the "daily rate"), and then multiplying the daily rate by the number of days which would have remained in the term hereof but for the cancellation or termination. Upon payment or tender of such amount, all of the obligations of Dance Council and the City under this Contract shall be discharged and terminated (except as otherwise provided herein) and no action shall lie or accrue for additional benefit, consideration or value for or based upon the services performed under or pursuant to this Contract.

VI. CONFLICT OF INTEREST

(a) No officer or employee of the City shall have any interest or receive any benefit, direct or indirect, in this Contract or the proceeds thereof. This prohibition is not intended and

should not be construed to preclude payment of expenses legitimately incurred by City officials in the conduct of the City's business.

(b) For purposes of this section, "benefit" means anything reasonably regarded as an economic advantage, including benefit to any other person in whose welfare the beneficiary is interested, but does not include contributions or expenditures made and reported in accordance with any law.

VII. ACCOUNTING

Prior to adopting its annual budget, Dance Council shall submit for the City's review a budget showing the use of the City's funds provided pursuant to this Contract, and Dance Council shall make such periodic reports to the City, as provided for herein, listing the expenditures made by Dance Council from the funds provided by the City. The approval of Dance Council's annual budget creates a fiduciary duty in Dance Council with respect to the funds provided by the City under this Contract.

The funds paid to Dance Council pursuant to this Contract shall be maintained in a separate account established for that purpose and may not be commingled with any other money. Funds received hereunder from the City may be spent for day to day operations, supplies, salaries and other administrative costs provided that such costs are necessary for the promotion and encouragement of the purposes for which the funds may be used as described herein.

Dance Council shall maintain complete and accurate financial records of all of its revenues, including, without limitation, each expenditure of revenue received pursuant to this Contract. By the twenty-first (21st) day after the close of each quarter (beginning with the quarter ending December 31, 2003, with the last quarter ending September 30, 2004), Dance Council shall provide the City the following: (a) a detailed financial report for the previous quarter listing the expenditures made by Dance Council of the funds paid to Dance Council under this Contract; and (b) a year-to-date report of the expenditures made by Dance Council of the funds paid to Dance Council under this Contract (and if this Contract is terminated prior to its expiration, Dance Council shall provide such reports as set forth above for the period prior to the expiration for which reports have not been provided, and such obligation shall survive the termination hereof; and the obligation to provide the reports for the last quarter of this Contract shall survive the expiration of this Contract). On request of the City at any time, Dance Council shall make its records available for inspection and review by the City or its designated representative(s). Within ninety (90) days of the end of Dance Council's fiscal year, Dance Council shall provide the City with a financial statement signed by the Chairman of Dance Council's Board of Directors (or other person acceptable to the City) and audited by an independent Certified Public Accountant, setting forth Dance Council's income, expenses, assets and liabilities, and such obligation shall survive the termination or expiration of this Contract.

VIII. INDEPENDENT CONTRACTOR

In performing services under this Contract, the relationship between the City and Dance Council is that of independent contractor, and the City and Dance Council by the execution of this Contract do not change the independent status of Dance Council. No term or provision of this Contract or action by Dance Council in the performance of this Contract is intended nor shall be

construed as making Dance Council the agent, servant or employee of the City, or to create an employer-employee relationship, a joint venture relationship, or a joint enterprise relationship.

IX. NON-ASSIGNABILITY

Dance Council may not and shall have no authority to assign, transfer, or otherwise convey by any means whatsoever this Contract or any of the rights, duties or responsibilities hereunder without obtaining the prior written approval of the City, and any attempted assignment, transfer, or other conveyance of this Contract without such approval shall be null and void and be cause for immediate termination of this Contract by the City.

X. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPRISE

Nothing contained in this Contract shall be deemed to constitute that the City and Dance Council are partners or joint venturers with each other, or shall be construed or be deemed to establish that their relationship constitutes, or that this Contract creates, a joint enterprise.

XI. COPYRIGHT

Dance Council assumes full responsibility for complying with all United States laws and treaty terms pertaining to intellectual property issues and any applicable regulations, including but not limited to the assumption of all responsibilities for paying all royalties which are due for the use of domestic or foreign copyrighted works in Dance Council's performances, transmissions or broadcasts, and Dance Council, without limiting any other indemnity given by Dance Council as set forth herein, agrees to defend, indemnify, and hold harmless the City, its officials, officers, employees, and agents, for any liability, claims or damages (including but not limited to court costs and reasonable attorney's fees) growing out of Dance Council's infringement or violation of any statute, treaty term or regulation applicable to intellectual property rights, including but not limited to copyrights.

XII. NON-DISCRIMINATION

During the term of this Contract, Dance Council agrees that it shall not discriminate against any employee or applicant for employment because of race, age, color, sex or religion, ancestry, national origin, place of birth, or handicap.

XIII. LEGAL COMPLIANCE; CONTRACT SUBJECT TO LAWS

Dance Council shall observe and abide by, and this Contract is subject to, all applicable federal, state, and local (including the City) laws, rules, regulations, and policies (including, without limitation, the Charter and Ordinances of the City), as the same currently exist or as they may be hereafter amended.

XIV. VENUE; GOVERNING LAW

In the event of any action under this Contract, venue for all causes of action shall be instituted and maintained in Dallas County, Texas. The parties agree that the laws of the State of

Texas shall govern and apply to the interpretation, validity and enforcement of this Contract; and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this Contract.

XV. COUNTERPARTS

This Contract may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

XVI. NO WAIVER; RIGHTS CUMULATIVE

The failure by either party to exercise any right or power, or option given to it by this Contract, or to insist upon strict compliance with the terms of this Contract, shall not constitute a waiver of the terms and conditions of this Contract with respect to any other or subsequent breach thereof, nor a waiver by such party of its rights at any time thereafter to require exact and strict compliance with all the terms hereof. The rights or remedies under this Contract are cumulative to any other rights or remedies, which may be granted by law.

XVII. NOTICES

All notices, communications and reports, required or permitted under this Contract shall be personally delivered or mailed to the respective parties using certified mail, return receipt requested, postage prepaid, at the addresses shown below. The City and Dance Council agree to provide the other with written notification within five (5) days, if the address for notices, provided below, is changed. Notices by personal delivery shall be deemed delivered upon the date delivered; mailed notices shall be deemed communicated on the date shown on the return receipt. If no date is shown, the mailed notice shall be deemed communicated on the third (3rd) day after depositing the same in the United States mail.

The City's address:

Mario Canizares
Assistant to the City Manager
Town of Addison
5300 Belt Line Road
Dallas, Texas 75254

Dance Council's address:

Cindy Denmark
3530 Harry Hines Blvd.
Dallas, Texas 75219

XVIII. SEVERABILITY

The terms of this Contract are severable, and if any section, paragraph, clause, or other portion of this Contract shall be found to be illegal, unlawful, unconstitutional or void for any reason, the balance of the Contract shall remain in full force and effect and the parties shall be deemed to have contracted as if said section, paragraph, clause or portion had not been in the Contract initially.

XIX. AUTHORITY TO EXECUTE CONTRACT

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Contract on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.

XX. ENTIRE AGREEMENT

This Contract represents the entire and integrated contract and agreement between the City and Dance Council and supersedes all prior negotiations, representations and/or agreements, either written or oral. This Contract may be amended only by written instrument signed by both the City and Dance Council.

IN WITNESS THEREOF, the parties hereto have caused this Contract to be signed by their proper corporate officers as first above specified, and have caused their proper corporate seal to be hereto affixed the day and year first above written.

TOWN OF ADDISON, TEXAS

DANCE COUNCIL

By: _____
Ron Whitehead, City Manager

By: _____
Chairman of the Board

ATTEST:

ATTEST:

By: _____
Carmen Moran, City Secretary

By: _____

Council Agenda Item: #2f**SUMMARY:**

To consider approval of the contracts for services between the Town of Addison and the non-profits agencies funded from the General Fund and Hotel Fund budgets. The agencies and the amounts were approved by the City Council and included in the adopted FY 2003/04 budget.

FINANCIAL IMPACT:

All contracts are fully funded within the General Fund and Hotel Fund budgets.

	General Fund	Hotel Fund
Budgeted Amount:	<u>\$82,500.00</u>	<u>\$20,100.00</u>
Cost:	<u>\$82,500.00</u>	<u>\$20,100.00</u>

BACKGROUND:

During the FY 2003/04 budget process, the City Council reviewed the following non-profit agencies and funding amounts for FY 2003/04. Attached are the contracts for the non-profits and minor changes have made to ensure consistency within the contracts and to reflect changes to performances and their dates as applicable.

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H.O.P.E.	\$5,000		
The Family Place	\$5,000		
DFW International	\$2,500		
TOTAL	\$82,500	TOTAL	\$20,100

RECOMMENDATION:

It is recommended that the City Council approve the resolutions authorizing the City Manager to enter into contracts with the non-profits for the amounts listed above. These contracts shall be subject to final review and approval by the City Attorney to allow the flexibility to negotiate any minor changes as needed.

AGENCY	FY 2002/03 FUNDING LEVEL	FY 2003/04 FUNDING LEVEL
<i>GENERAL FUND:</i>		
Communities in Schools Dallas, Inc.	\$30,000	\$40,000
Senior Adult Services	\$15,000	\$15,000
Metrocrest Social Service Center +	\$15,000	\$15,000
Metrocrest Chamber of Commerce +	\$9,000	\$9,000
Special Care and Career Services	\$5,000	\$5,000
H.O.P.E.	\$5,000	\$5,000
The Family Place	\$5,000	\$5,000
DFW International *	\$0	\$2,500
Metrocrest Family Medical Clinic	\$0	\$0
SUBTOTAL	\$ 84,000	\$ 96,500
<i>HOTEL FUND:</i>		
WaterTower Theatre **	\$380,000	\$380,000
Texas Chamber Orchestra +	\$15,000	\$30,000
Brookhaven College Center for the Arts	\$8,500	\$8,500
Dance Council	\$6,700	\$6,600
Repertory Company Theatre	\$8,700	\$5,000
Nova Dancing Company (Barefoot Brigade) *	\$0	0
SUBTOTAL	\$ 418,900	\$ 430,100
GRAND TOTAL	\$ 502,900	\$ 526,600

* Indicates a first time request

** Request includes \$150,000 in potential Town "Matching Funds"

+ Indicates that the agency's funding amount was approved by City Council on 11/11/03

TOWN OF ADDISON, TEXAS

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING A CONTRACT FOR SERVICES WITH THE REPETORY COMPANY THEATRE TO PERFORM CERTAIN SERVICES FOR THE CITY FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2004 AS SET FORTH AND DESCRIBED IN THE ATTACHED CONTRACT; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT ON BEHALF OF THE CITY; PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:

Section 1. The Contract for Services by and between the Town of Addison, Texas and the Repertory Company Theatre for the fiscal year beginning October 1, 2003 and ending September 30, 2004, a true and correct copy of which Contract is attached hereto, is hereby approved.

Section 2. The City Manager is authorized and empowered to execute the said Contract for Services on behalf of the City and to take all steps necessary to carry out the terms thereof.

Section 3. This Resolution shall take effect from and after its date of adoption.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this _____ day of _____, 2003.

Mayor R. Scott Wheeler

ATTEST:

By: _____
Carmen Moran, City Secretary

APPROVED AS TO FORM:

By: _____
Ken Dippel, City Attorney

STATE OF TEXAS

§

§

CONTRACT FOR SERVICES

COUNTY OF DALLAS

§

This Contract for Services is made and entered into as of the 1st day of October, 2003 by and between the Town of Addison, Texas (the "City") and the Repertory Company Theatre (the "Theatre").

WITNESSETH:

WHEREAS, the Theatre is a private, non-profit organization established under the laws of the State of Texas for the purpose of providing quality, family theatre programming, to train children and youth in theatre arts, and to promote theatre as an art form; and

WHEREAS, the Theatre's productions and other work attract tourists to and promotes tourism in the City, and the City has an interest in attracting such tourists and promoting tourism to the area in order to receive the economic benefits associated therewith; and

WHEREAS, it is the City's desire to encourage and promote the arts, including, without limitation, theatre; and

WHEREAS, the City is authorized to expend revenues from its hotel occupancy tax for the encouragement, promotion, improvement, and application of the arts, including, without limitation, the theatre, and desires to encourage and promote the arts (including theatre) through the execution of this Contract for Services.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements hereinafter set forth, the benefits flowing to each of the parties hereto, and other good and valuable consideration, the Town of Addison, Texas and the Repertory Company Theatre do hereby contract, covenant and agree as follows:

I. TERM

The term of this Contract shall be for a period of one year from the 1st day of October, 2003 through the 30th day of September, 2004, except as otherwise provided for herein.

II. SERVICES

The Theatre shall provide the following services:

(a) The production of a theatre performance (the "Shows"):

- *The Valentine Cabaret* (to be held at the Stone Cottage, Addison Theatre Centre February 14 – 16, 2004)

(b) A listing of the City as a presenting sponsor on programs, flyers, posters and signs for the Shows.

(c) A listing of the City as a presenting sponsor of the Shows in all press releases, advertisements, and communications with schools in and around the City.

(d) A listing as a presenting sponsor on all street banners and signs in connection with the Shows.

(e) Submit detailed quarterly financial statements and program results to the City within thirty (30) days after the end of the preceding quarter listing the expenditures made by the Theatre with the revenues received pursuant to this Contract.

III. COMPENSATION

For the operation and provision of the services, projects and programs of the Theatre as described herein, the City shall pay the Theatre the sum of Five Thousand and No/100 Dollars (\$5,000.00). Such sum shall be paid on or before April 9, 2004, provided Theatre is not then in default of this Contract.

IV. RESPONSIBILITY; INDEMNIFICATION

Theatre agrees to assume and does hereby assume all responsibility and liability for damages or injuries sustained by persons or property, whether real or asserted, by or from the performance of services performed and to be performed hereunder by Theatre, its officials, officers, employees, agents, servants, invitees, contractors, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. Theatre covenants and agrees to and shall defend, indemnify and hold harmless the City, its officials, officers, agents and employees (together, "Indemnified Persons") against, and hold the Indemnified Persons harmless from, any and all liability, losses, penalties, claims, lawsuits, actions, causes of action, costs, expenses, or fees (including, without limitation, attorney's fees), breach of contract, or any other harm for which any type of recovery (whether at law, in equity, or otherwise) is sought (together, "Claims"), resulting from or based upon, in whole or in part, any act omission of Theatre, its officials, officers, employees, agents, servants, invitees, contractors, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, under or in connection with this Contract, the performance thereof by Theatre, or any of its activities, and regardless of whether or not any such Claims is caused in part by any of the Indemnified Persons. Theatre agrees to reimburse the City for all sums which the City may pay or may be paid on behalf of the City or which the City may be compelled to pay in settlement of any Claims, including without limitation any Claims under the provisions of any workers compensation law or other similar law. The provisions of this Section shall survive the termination or expiration of this Contract.

V. TERMINATION

This Contract may be canceled and terminated by either party at any time and for any reason upon giving at least thirty (30) days written notice of such cancellation and termination to the other

party hereto. Such notice shall be sent certified mail, return receipt requested, and to the most recent address shown on the records of the party terminating the Contract. The thirty (30) day period shall commence upon deposit of the said notice in the United States mail and shall conclude at midnight of the 30th day thereafter. In the event of such cancellation and termination and if Theatre has failed at the time of such cancellation and termination to provide all of the services set forth herein, Theatre shall refund to the City that portion of funds paid to Theatre under the terms of this Contract in accordance with the following: Prorata funding returned to the City by Theatre shall be determined by dividing the amount paid by the City under this Contract by 365 (the "daily rate"), and then multiplying the daily rate by the number of days which would have remained in the term hereof but for the cancellation or termination. Upon payment or tender of such amount, all of the obligations of Theatre and the City under this Contract shall be discharged and terminated (except as otherwise provided herein) and no action shall lie or accrue for additional benefit, consideration or value for or based upon the services performed under or pursuant to this Contract.

VI. CONFLICT OF INTEREST

(a) No officer or employee of the City shall have any interest or receive any benefit, direct or indirect, in this Contract or the proceeds thereof. This prohibition is not intended and should not be construed to preclude payment of expenses legitimately incurred by City officials in the conduct of the City's business.

(b) For purposes of this section, "benefit" means anything reasonably regarded as an economic advantage, including benefit to any other person in whose welfare the beneficiary is interested, but does not include contributions or expenditures made and reported in accordance with any law.

VII. ACCOUNTING

Prior to adopting its annual budget, Theatre shall submit for the City's review a budget showing the use of the City's funds provided pursuant to this Contract, and Theatre shall make such periodic reports to the City, as provided for herein, listing the expenditures made by Theatre from the funds provided by the City. The approval of Theatre's annual budget creates a fiduciary duty in Theatre with respect to the funds provided by the City under this Contract.

The funds paid to Theatre pursuant to this Contract shall be maintained in a separate account established for that purpose and may not be commingled with any other money. Funds received hereunder from the City may be spent for day to day operations, supplies, salaries and other administrative costs provided that such costs are necessary for the promotion and encouragement of the purposes for which the funds may be used as described herein.

Theatre shall maintain complete and accurate financial records of all of its revenues, including, without limitation, each expenditure of revenue received pursuant to this Contract. By the twenty-first (21st) day after the close of each quarter (beginning with the quarter ending December 31, 2004, with the last quarter ending September 30, 2004), Theatre shall provide the City the following: (a) a detailed financial report for the previous quarter listing the expenditures made by Theatre of the funds paid to Theatre under this Contract; and (b) a year-to-date report of the expenditures made by Theatre of the funds paid to Dance Council under this Contract (and if

this Contract is terminated prior to its expiration, Theatre shall provide such reports as set forth above for the period prior to the expiration for which reports have not been provided, and such obligation shall survive the termination hereof; and the obligation to provide the reports for the last quarter of this Contract shall survive the expiration of this Contract). On request of the City at any time, Theatre shall make its records available for inspection and review by the City or its designated representative(s). Within ninety (90) days of the end of Theatre's fiscal year, Theatre shall provide the City with a financial statement signed by the Chairman of Theatre's Board of Directors (or other person acceptable to the City) and audited by an independent Certified Public Accountant, setting forth Theatre's income, expenses, assets and liabilities, and such obligation shall survive the termination or expiration of this Contract.

VIII. INDEPENDENT CONTRACTOR

In performing services under this Contract, the relationship between the City and Theatre is that of independent contractor, and the City and Theatre by the execution of this Contract do not change the independent status of Theatre. No term or provision of this Contract or action by Theatre in the performance of this Contract is intended nor shall be construed as making Theatre the agent, servant or employee of the City, or to create an employer-employee relationship, a joint venture relationship, or a joint enterprise relationship.

IX. NON-ASSIGNABILITY

Theatre may not and shall have no authority to assign, transfer, or otherwise convey by any means whatsoever this Contract or any of the rights, duties or responsibilities hereunder without obtaining the prior written approval of the City, and any attempted assignment, transfer, or other conveyance of this Contract without such approval shall be null and void and be cause for immediate termination of this Contract by the City.

X. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPRISE

Nothing contained in this Contract shall be deemed to constitute that the City and Theatre are partners or joint venturers with each other, or shall be construed or be deemed to establish that their relationship constitutes, or that this Contract creates, a joint enterprise.

XI. COPYRIGHT

The Theatre assumes full responsibility for complying with all United States laws and treaty terms pertaining to intellectual property issues and any applicable regulations, including but not limited to the assumption of all responsibilities for paying all royalties which are due for the use of domestic or foreign copyrighted works in the Theatre's performances, transmissions or broadcasts, and the Theatre, without limiting any other indemnity given by the Theatre as set forth herein, agrees to defend, indemnify, and hold harmless the City, its officials, officers, employees, and agents, for any liability, claims or damages (including but not limited to court costs and reasonable attorney's fees) growing out of the Theatre's infringement or violation of any statute, treaty term or regulation applicable to intellectual property rights, including but not limited to copyrights.

XII. NON-DISCRIMINATION

During the term of this Contract, the Theatre agrees that it shall not discriminate against any employee or applicant for employment because of race, age, color, sex or religion, ancestry, national origin, place of birth, or handicap.

XIII. LEGAL COMPLIANCE; CONTRACT SUBJECT TO LAWS

Theatre shall observe and abide by, and this Contract is subject to, all applicable federal, state, and local (including the City) laws, rules, regulations, and policies (including, without limitation, the Charter and Ordinances of the City), as the same currently exist or as they may be hereafter amended.

XIV. VENUE; GOVERNING LAW

In the event of any action under this Contract, venue for all causes of action shall be instituted and maintained in Dallas County, Texas. The parties agree that the laws of the State of Texas shall govern and apply to the interpretation, validity and enforcement of this Contract; and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this Contract.

XV. COUNTERPARTS

This Contract may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

XVI. NO WAIVER; RIGHTS CUMULATIVE

The failure by either party to exercise any right or power, or option given to it by this Contract, or to insist upon strict compliance with the terms of this Contract, shall not constitute a waiver of the terms and conditions of this Contract with respect to any other or subsequent breach thereof, nor a waiver by such party of its rights at any time thereafter to require exact and strict compliance with all the terms hereof. The rights or remedies under this Contract are cumulative to any other rights or remedies, which may be granted by law.

XVII. NOTICES

All notices, communications and reports, required or permitted under this Contract shall be personally delivered or mailed to the respective parties using certified mail, return receipt requested, postage prepaid, at the addresses shown below. The City and Theatre agree to provide the other with written notification within five (5) days, if the address for notices, provided below, is changed. Notices by personal delivery shall be deemed delivered upon the date delivered; mailed notices shall be deemed communicated on the date shown on the return receipt. If no date is shown, the mailed notice shall be deemed communicated on the third (3rd) day after depositing the same in the United States mail.

The City's address:

Mario Canizares
Assistant to the City Manager
Town of Addison
5300 Belt Line Road
Dallas, Texas 75254

The Theatre's address:

2100 Promenade Center #2176
Richardson, Texas
Dallas, Texas 75219

XVIII. SEVERABILITY

The terms of this Contract are severable, and if any section, paragraph, clause, or other portion of this Contract shall be found to be illegal, unlawful, unconstitutional or void for any reason, the balance of the Contract shall remain in full force and effect and the parties shall be deemed to have contracted as if said section, paragraph, clause or portion had not been in the Contract initially.

XIX. AUTHORITY TO EXECUTE CONTRACT

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Contract on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.

XX. ENTIRE AGREEMENT

This Contract represents the entire and integrated contract and agreement between the City and Theatre and supersedes all prior negotiations, representations and/or agreements, either written or oral. This Contract may be amended only by written instrument signed by both the City and Theatre.

IN WITNESS THEREOF, the parties hereto have caused this Contract to be signed by their proper corporate officers as first above specified, and have caused their proper corporate seal to be hereto affixed the day and year first above written.

TOWN OF ADDISON, TEXAS

REPERTORY COMPANY THEATRE

By: _____
Ron Whitehead, City Manager

By: _____
Chairman of the Board

ATTEST:

ATTEST:

By: _____
Carmen Moran, City Secretary

By: _____

Council Agenda Item: #2g**SUMMARY:**

To consider approval of the contracts for services between the Town of Addison and the non-profits agencies funded from the General Fund and Hotel Fund budgets. The agencies and the amounts were approved by the City Council and included in the adopted FY 2003/04 budget.

FINANCIAL IMPACT:

All contracts are fully funded within the General Fund and Hotel Fund budgets.

	General Fund	Hotel Fund
Budgeted Amount:	<u>\$82,500.00</u>	<u>\$20,100.00</u>
Cost:	<u>\$82,500.00</u>	<u>\$20,100.00</u>

BACKGROUND:

During the FY 2003/04 budget process, the City Council reviewed the following non-profit agencies and funding amounts for FY 2003/04. Attached are the contracts for the non-profits and minor changes have made to ensure consistency within the contracts and to reflect changes to performances and their dates as applicable.

General Fund:	Amount	Hotel Fund	Amount
Communities in Schools Dallas	\$40,000	Brookhaven College for the Arts	\$8,500
Senior Adult Services	\$15,000	Dance Council	\$6,600
Metrocrest Social Service Center	\$15,000	Repertory Company Theatre	\$5,000
H.O.P.E.	\$5,000		
The Family Place	\$5,000		
DFW International	\$2,500		
TOTAL	\$82,500	TOTAL	\$20,100

RECOMMENDATION:

It is recommended that the City Council approve the resolutions authorizing the City Manager to enter into contracts with the non-profits for the amounts listed above. These contracts shall be subject to final review and approval by the City Attorney to allow the flexibility to negotiate any minor changes as needed.

AGENCY	FY 2002/03 FUNDING LEVEL	FY 2003/04 FUNDING LEVEL
<i>GENERAL FUND:</i>		
Communities in Schools Dallas, Inc.	\$30,000	\$40,000
Senior Adult Services	\$15,000	\$15,000
Metrocrest Social Service Center +	\$15,000	\$15,000
Metrocrest Chamber of Commerce +	\$9,000	\$9,000
Special Care and Career Services	\$5,000	\$5,000
H.O.P.E.	\$5,000	\$5,000
The Family Place	\$5,000	\$5,000
DFW International *	\$0	\$2,500
Metrocrest Family Medical Clinic	\$0	\$0
SUBTOTAL	\$ 84,000	\$ 96,500
<i>HOTEL FUND:</i>		
WaterTower Theatre **	\$380,000	\$380,000
Texas Chamber Orchestra +	\$15,000	\$30,000
Brookhaven College Center for the Arts	\$8,500	\$8,500
Dance Council	\$6,700	\$6,600
Repertory Company Theatre	\$8,700	\$5,000
Nova Dancing Company (Barefoot Brigade) *	\$0	0
SUBTOTAL	\$ 418,900	\$ 430,100
GRAND TOTAL	\$ 502,900	\$ 526,600

* Indicates a first time request

** Request includes \$150,000 in potential Town "Matching Funds"

+ Indicates that the agency's funding amount was approved by City Council on 11/11/03

TOWN OF ADDISON, TEXAS

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING A CONTRACT FOR SERVICES WITH SENIOR ADULT SERVICES TO PERFORM CERTAIN SERVICES FOR THE CITY FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2004 AS SET FORTH AND DESCRIBED IN THE ATTACHED CONTRACT; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT ON BEHALF OF THE CITY; PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:

Section 1. The Contract for Services by and between the Town of Addison, Texas and Senior Adult Services for the fiscal year beginning October 1, 2003 and ending September 30, 2004, a true and correct copy of which Contract is attached hereto, is hereby approved.

Section 2. The City Manager is authorized and empowered to execute the said Contract for Services on behalf of the City and to take all steps necessary to carry out the terms thereof.

Section 3. This Resolution shall take effect from and after its date of adoption.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this _____ day of _____, 2003.

Mayor R. Scott Wheeler

ATTEST:

By: _____
Carmen Moran, City Secretary

APPROVED AS TO FORM:

By: _____
Ken Dippel, City Attorney

STATE OF TEXAS

§

CONTRACT FOR SERVICES

§

COUNTY OF DALLAS

§

This Contract for Services is made and entered into as of the 1st day of October, 2003 by and between the Town of Addison, Texas (the "City") and Senior Adult Services of Addison, Carrollton, Coppell, and Farmers Branch ("Senior Adult Services").

WITNESSETH:

WHEREAS, Senior Adult Services is a private, non-profit organization established under the laws of the State of Texas for the purpose of providing information, programs, and referral services to the senior citizens within Addison, Carrollton, Coppell and Farmers Branch; and

WHEREAS, the success or failure of Senior Adult Services purposes and objectives has a direct impact on the health, comfort, and welfare of the senior citizens of the Town; and

WHEREAS, the City has full power of local self government, has authority to contract with other persons, has authority to adopt regulations that are for the good government, peace, and order of the City, has authority to enforce laws reasonably necessary to protect the public health, and the services provided by Senior Adult Services hereunder are in the public interest and are for, constitute and serve a public purpose in promoting the health and welfare of the citizens of the City.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements hereinafter set forth, the benefits flowing to each of the parties hereto, and other good and valuable consideration, the Town of Addison, Texas and Senior Adult Services of Addison, Carrollton, Coppell, and Farmers Branch do hereby covenant and agree as follows:

I. TERM

The term of this contract and agreement shall be for a period of one year from the 1st day of October, 2003 through the 30th day of September, 2004, except as otherwise provided for herein.

II. SERVICES

Senior Adult Services covenants and agrees that it shall:

(a) Design, develop, and implement referral services, projects, or programs beneficial to the senior citizens living in the City of which include

- (1) Transportation Assistance
- (2) Home Repair Assistance
- (3) Informational and Referral Services
- (4) Home Delivered Meals
- (5) Provide Case Management Services

(b) Submit detailed quarterly financial statements and program results to the City within thirty (30) days after the end of the preceding quarter explaining all expenditures.

III. COMPENSATION

For the operation and provision of the services, projects and programs of Senior Adult Services as described herein, the City shall pay Senior Adult Services the sum of Fifteen Thousand and No/100 Dollars (\$15,000.00). Such sum shall be paid on or before January 9, 2004, provided Senior Adult Services is not then in default of this Contract.

IV. INDEMNIFICATION

Senior Adult Services agrees to assume and does hereby assume all responsibility and liability for damages or injuries sustained by persons or property, whether real or asserted, by or from the performance of services performed and to be performed hereunder by Senior Adult Services, its officials, officers, employees, agents, servants, invitees, contractors, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. Senior Adult Services covenants and agrees to and shall defend, indemnify and hold harmless the City, its officials, officers, agents and employees (together, "Indemnified Persons") against, and hold the Indemnified Persons harmless from, any and all liability, losses, penalties, claims, lawsuits, actions, causes of action, costs, expenses, or fees (including, without limitation, attorney's fees), breach of contract, or any other harm for which any type of recovery (whether at law, in equity, or otherwise) is sought (together, "Claims"), resulting from or based upon, in whole or in part, any act omission of Senior Adult Services, its officials, officers, employees, agents, servants, invitees, contractors, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, under or in connection with this Contract, the performance thereof by Senior Adult Services, or any of its activities, and regardless of whether or not any such Claims is caused in part by any of the Indemnified Persons. Senior Adult Services agrees to reimburse the City for all sums which the City may pay or may be paid on behalf of the City or which the City may be compelled to pay in settlement of any Claims, including without limitation any Claims under the provisions of any workers compensation law or other similar law. The provisions of this Section shall survive the termination or expiration of this Contract.

V. TERMINATION

This Contract may be canceled and terminated by either party at any time and for any reason upon giving at least thirty (30) days written notice of such cancellation and termination to the other party hereto. Such notice shall be sent certified mail, return receipt requested, and to the most recent address shown on the records of the party terminating the Contract. The thirty (30) day period shall commence upon deposit of the said notice in the United States mail and shall conclude at midnight of the 30th day thereafter. In the event of such cancellation and termination and if Senior Adult Services has failed at the time of such cancellation and termination to provide all of the services set forth herein, Senior Adult Services shall refund to the City that portion of funds paid to Senior Adult Services under the terms of this Contract in accordance with the following: Prorata funding returned to the City by Senior Adult Services shall be determined by dividing the amount paid by the City under this Contract by 365 (the "daily rate"), and then multiplying the daily rate by

the number of days which would have remained in the term hereof but for the cancellation or termination. Upon payment or tender of such amount, all of the obligations of Senior Adult Services and the City under this Contract shall be discharged and terminated (except as otherwise provided herein) and no action shall lie or accrue for additional benefit, consideration or value for or based upon the services performed under or pursuant to this Contract.

VI. CONFLICT OF INTEREST

(a) No officer or employee of the City shall have any interest or receive any benefit, direct or indirect, in this Contract or the proceeds thereof. This prohibition is not intended and should not be construed to preclude payment of expenses legitimately incurred by City officials in the conduct of the City's business. No officer or employee of Senior Adult Services shall have any financial interest, direct or indirect, in this Contract or the proceeds thereof.

(b) For purposes of this section, "benefit" means anything reasonably regarded as an economic advantage, including benefit to any other person in whose welfare the beneficiary is interested, but does not include contributions or expenditures made and reported in accordance with any law.

VII. ACCOUNTING

Prior to adopting its annual budget, Senior Adult Services shall submit for the City's review a budget showing the use of the City's funds provided pursuant to this Contract, and Senior Adult Services shall make such periodic reports to the City, as provided for herein, listing the expenditures made by Senior Adult Services from the funds provided by the City. The approval of Senior Adult Services' annual budget creates a fiduciary duty in Senior Adult Services with respect to the funds provided by the City under this Contract.

The funds paid to Senior Adult Services pursuant to this Contract shall be maintained in a separate account established for that purpose and may not be commingled with any other money. Funds received hereunder from the City may be spent for day to day operations, supplies, salaries and other administrative costs provided that such costs are necessary for the promotion and encouragement of the purposes for which the funds may be used as described herein.

Senior Adult Services shall maintain complete and accurate financial records of all of its revenues, including, without limitation, each expenditure of revenue received pursuant to this Contract. By the twenty-first (21st) day after the close of each quarter (beginning with the quarter ending December 31, 2003, with the last quarter ending September 30, 2004), Senior Adult Services shall provide the City the following: (a) a detailed financial report for the previous quarter listing the expenditures made by Senior Adult Services of the funds paid to Senior Adult Services under this Contract; and (b) a year-to-date report of the expenditures made by Senior Adult Services of the funds paid to Dance Council under this Contract (and if this Contract is terminated prior to its expiration, Senior Adult Services shall provide such reports as set forth above for the period prior to the expiration for which reports have not been provided, and such obligation shall survive the termination hereof; and the obligation to provide the reports for the last quarter of this Contract shall survive the expiration of this Contract). On request of the City at any time, Senior Adult Services shall make its records available for inspection and review by the City or its designated

representative(s). Within ninety (90) days of the end of Senior Adult Services' fiscal year, Senior Adult Services shall provide the City with a financial statement signed by the Chairman of Senior Adult Services' Board of Directors (or other person acceptable to the City) and audited by an independent Certified Public Accountant, setting forth Senior Adult Services' income, expenses, assets and liabilities, and such obligation shall survive the termination or expiration of this Contract.

VIII. INDEPENDENT CONTRACTOR

In performing services under this Contract, the relationship between the City and Senior Adult Services is that of independent contractor, and the City and Senior Adult Services by the execution of this Contract do not change the independent status of Senior Adult Services. No term or provision of this Contract or action by Senior Adult Services in the performance of this Contract is intended nor shall be construed as making Senior Adult Services the agent, servant or employee of the City, or to create an employer-employee relationship, a joint venture relationship, or a joint enterprise relationship.

IX. NON-ASSIGNABILITY

Senior Adult Services may not and shall have no authority to assign, transfer, or otherwise convey by any means whatsoever this Contract or any of the rights, duties or responsibilities hereunder without obtaining the prior written approval of the City, and any attempted assignment, transfer, or other conveyance of this Contract without such approval shall be null and void and be cause for immediate termination of this Contract by the City.

X. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPRISE

Nothing contained in this Contract shall be deemed to constitute that the City and Senior Adult Services are partners or joint venturers with each other, or shall be construed or be deemed to establish that their relationship constitutes, or that this Contract creates, a joint enterprise.

XI. NON-DISCRIMINATION

During the term of this Contract, Senior Adult Services agrees that it shall not discriminate against any employee or applicant for employment because of race, age, color, sex or religion, ancestry, national origin, place of birth, or handicap.

XII. LEGAL COMPLIANCE; CONTRACT SUBJECT TO LAWS

Senior Adult Services shall observe and abide by, and this Contract is subject to, all applicable federal, state, and local (including the City) laws, rules, regulations, and policies (including, without limitation, the Charter and Ordinances of the City), as the same currently exist or as they may be hereafter amended.

XIII. VENUE; GOVERNING LAW

In the event of any action under this Contract, venue for all causes of action shall be instituted and maintained in Dallas County, Texas. The parties agree that the laws of the State of

Texas shall govern and apply to the interpretation, validity and enforcement of this Contract; and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this Contract.

XIV. COUNTERPARTS

This Contract may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

XV. NO WAIVER; RIGHTS CUMULATIVE

The failure by either party to exercise any right or power, or option given to it by this Contract, or to insist upon strict compliance with the terms of this Contract, shall not constitute a waiver of the terms and conditions of this Contract with respect to any other or subsequent breach thereof, nor a waiver by such party of its rights at any time thereafter to require exact and strict compliance with all the terms hereof. The rights or remedies under this Contract are cumulative to any other rights or remedies, which may be granted by law.

XVI. NOTICES

All notices, communications and reports, required or permitted under this Contract shall be personally delivered or mailed to the respective parties using certified mail, return receipt requested, postage prepaid, at the addresses shown below. The City and Senior Adult Services agree to provide the other with written notification within five (5) days, if the address for notices, provided below, is changed. Notices by personal delivery shall be deemed delivered upon the date delivered; mailed notices shall be deemed communicated on the date shown on the return receipt. If no date is shown, the mailed notice shall be deemed communicated on the third (3rd) day after depositing the same in the United States mail.

The City's address:

Mario Canizares
Assistant to the City Manager
Town of Addison
5300 Belt Line Road
Dallas, Texas 75254

Senior Adult Services' address:

Attn: _____

XVII. SEVERABILITY

The terms of this Contract are severable, and if any section, paragraph, clause, or other portion of this Contract shall be found to be illegal, unlawful, unconstitutional or void for any reason, the balance of the Contract shall remain in full force and effect and the parties shall be deemed to have contracted as if said section, paragraph, clause or portion had not been in the Contract initially.

XVIII. AUTHORITY TO EXECUTE CONTRACT

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Contract on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.

XIX. ENTIRE CONTRACT

This Contract represents the entire and integrated contract and agreement between the City and Senior Adult Services and supersedes all prior negotiations, representations and/or agreements, either written or oral. This Contract may be amended only by written instrument signed by both the City and Senior Adult Services

IN WITNESS THEREOF, the parties hereto have caused this Contract to be signed by their proper corporate officers as first above specified, and have caused their proper corporate seal to be hereto affixed the day and year first above written.

TOWN OF ADDISON, TEXAS

**SENIOR ADULT SERVICES
OF ADDISON, CARROLLTON COPPELL
AND FARMERS BRANCH**

By: _____
Ron Whitehead, City Manager

By: _____

(printed name)

ATTEST:

Its: _____

By: _____
Carmen Moran, City Secretary

Council Agenda Item: #2h**SUMMARY:**

To consider approval of the contracts for services between the Town of Addison and the non-profits agencies funded from the General Fund and Hotel Fund budgets. The agencies and the amounts were approved by the City Council and included in the adopted FY 2003/04 budget.

FINANCIAL IMPACT:

All contracts are fully funded within the General Fund and Hotel Fund budgets.

	General Fund	Hotel Fund
Budgeted Amount:	<u>\$82,500.00</u>	<u>\$20,100.00</u>
Cost:	<u>\$82,500.00</u>	<u>\$20,100.00</u>

BACKGROUND:

During the FY 2003/04 budget process, the City Council reviewed the following non-profit agencies and funding amounts for FY 2003/04. Attached are the contracts for the non-profits and minor changes have made to ensure consistency within the contracts and to reflect changes to performances and their dates as applicable.

General Fund:	Amount	Hotel Fund	Amount
Communities in Schools Dallas	\$40,000	Brookhaven College for the Arts	\$8,500
Senior Adult Services	\$15,000	Dance Council	\$6,600
Metrocrest Social Service Center	\$15,000	Repertory Company Theatre	\$5,000
H.O.P.E.	\$5,000		
The Family Place	\$5,000		
DFW International	\$2,500		
TOTAL	\$82,500	TOTAL	\$20,100

RECOMMENDATION:

It is recommended that the City Council approve the resolutions authorizing the City Manager to enter into contracts with the non-profits for the amounts listed above. These contracts shall be subject to final review and approval by the City Attorney to allow the flexibility to negotiate any minor changes as needed.

AGENCY	FY 2002/03 FUNDING LEVEL	FY 2003/04 FUNDING LEVEL
<i>GENERAL FUND:</i>		
Communities in Schools Dallas, Inc.	\$30,000	\$40,000
Senior Adult Services	\$15,000	\$15,000
Metrocrest Social Service Center +	\$15,000	\$15,000
Metrocrest Chamber of Commerce +	\$9,000	\$9,000
Special Care and Career Services	\$5,000	\$5,000
H.O.P.E.	\$5,000	\$5,000
The Family Place	\$5,000	\$5,000
DFW International *	\$0	\$2,500
Metrocrest Family Medical Clinic	\$0	\$0
SUBTOTAL	\$ 84,000	\$ 96,500
<i>HOTEL FUND:</i>		
WaterTower Theatre **	\$380,000	\$380,000
Texas Chamber Orchestra +	\$15,000	\$30,000
Brookhaven College Center for the Arts	\$8,500	\$8,500
Dance Council	\$6,700	\$6,600
Repertory Company Theatre	\$8,700	\$5,000
Nova Dancing Company (Barefoot Brigade) *	\$0	0
SUBTOTAL	\$ 418,900	\$ 430,100
GRAND TOTAL	\$ 502,900	\$ 526,600

* Indicates a first time request

** Request includes \$150,000 in potential Town "Matching Funds"

+ Indicates that the agency's funding amount was approved by City Council on 11/11/03

TOWN OF ADDISON, TEXAS

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING A CONTRACT FOR SERVICES WITH HONORING OF PEOPLES EVERYWHERE ("H.O.P.E.") TO PERFORM CERTAIN SERVICES FOR THE CITY FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2004 AS SET FORTH AND DESCRIBED IN THE ATTACHED CONTRACT; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT ON BEHALF OF THE CITY; PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:

Section 1. The Contract for Services by and between the Town of Addison, Texas and H.O.P.E for the fiscal year beginning October 1, 2003 and ending September 30, 2004, a true and correct copy of which Contract is attached hereto, is hereby approved.

Section 2. The City Manager is authorized and empowered to execute the said Contract for Services on behalf of the City and to take all steps necessary to carry out the terms thereof.

Section 3. This Resolution shall take effect from and after its date of adoption.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this _____ day of _____, 2003.

Mayor R. Scott Wheeler

ATTEST:

By: _____
Carmen Moran, City Secretary

APPROVED AS TO FORM:

By: _____
Ken Dippel, City Attorney

STATE OF TEXAS

§

CONTRACT FOR SERVICES

COUNTY OF DALLAS

§

§

This Contract for Services is made and entered into as of the 1st day of October, 2003 by and between the Town of Addison, Texas (the "City") and Honoring of Peoples Everywhere ("H.O.P.E.").

WITNESSETH:

WHEREAS, H.O.P.E. is a private, non-profit organization established in 1992 under the laws of the State of Texas for the purpose of building a bridge between people of diverse culture and ethnic heritage through education, participation and dialogue so that the community becomes one of mutual respect and inclusion; and

WHEREAS, to accomplish its objectives, H.O.P.E. develops and presents multiple types of innovative programs that appeal to many ages, ethnicities and gender; and

WHEREAS, H.O.P.E. has developed a program for the 2003-2004 school year entitled the Whole School Program, whose objectives are to (i) affect student cultural awareness, learning and performance, particularly through skills identified in social studies, (ii) strengthen staff teamwork throughout the school, (iii) assist in culminating events that engage families and community, (iv) enhance teacher skills in informal education, and (v) bring additional community resources into the classroom for use by educators; and

WHEREAS, to carry out the Whole School Program, H.O.P.E. will be contacting and training school staff at least eight times per school year, including (i) demonstration and review of H.O.P.E.'s Circle of Culture© and it auxiliary Fishbowl, (ii) workshops that involve all grade levels in mutual hands-on activities, such as quilt-making, newspaper development, and learning review, (iii) identification of TEKS objectives in all activities, (iv) resources from the community, to align with selected countries of origin, ethnicities, and cultures, (v) assistance in development of culminating events (one per semester), with possibilities for parental involvement, (vi) banners, bulletin boards and other supplementary materials that enhance school climate, and (vii) evaluation of progress at strategic points during the year; and

WHEREAS, during the 2003-2004 school year, H.O.P.E. will conduct the Whole School Program at the Anne Frank Elementary School, part of the Dallas Independent School District; and

WHEREAS, the success or failure of the purposes and objectives of H.O.P.E. has an impact on the health and welfare of the citizens of the City; and

WHEREAS, the City has full power of local self government, has authority to contract with other persons, has authority to adopt regulations that are for the good government, peace, and order of the City, has authority to enforce laws reasonably necessary to protect the public health, and the services provided by H.O.P.E. hereunder are in the public interest and are for, constitute and serve a public purpose in promoting the health and welfare of the citizens of the City.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements hereinafter set forth, the benefits flowing to each of the parties hereto, and other good and valuable consideration, the Town of Addison, Texas and Honoring of Peoples Everywhere do hereby contract, covenant and agree as follows:

I. TERM

The term of this Contract shall be for a period of one year from the 1st day of October, 2003 through the 30th day of September, 2004, except as otherwise provided for herein.

II. SERVICES

H.O.P.E. covenants and agrees that it shall:

- (a) Provide to the Anne Frank Elementary School the Whole School Program, which shall include (without limitation), the following:
 - (1) Contacting and training of the school staff at least eight times during the 2003-2004 school year, which shall include the items listed in paragraphs (2) through (8) of this paragraph (a), below;
 - (2) Demonstration and review of H.O.P.E.'s Circle of Culture© and its auxiliary Fishbowl;
 - (3) Provision of workshops that involve all grade levels in mutual hands-on activities, such as quilt-making, newspaper development, and learning review;
 - (4) Identification of TEKS objectives in all activities;
 - (5) Provision of resources from the community, to align with selected countries of origin, ethnicities, and cultures;
 - (6) Assistance in development of culminating events (one per semester), with possibilities for parental involvement
 - (7) Provision and display of banners, bulletin boards and other supplementary materials that enhance school climate, and
 - (8) Evaluation of progress at strategic points during the year.
- (b) Provide to the City as requested a report (in writing or oral, as requested) regarding the progress and results of the Whole School Program at Anne Frank Elementary School.
- (c) Submit detailed quarterly financial statements and program results to the City within thirty (30) days after the end of the preceding quarter listing the expenditures made by H.O.P.E. with the revenues received pursuant to this Contract.

III. COMPENSATION

For the operation and provision of the services, projects and programs of H.O.P.E. as described herein, the City shall pay H.O.P.E. the sum of Five Thousand and No/100 Dollars (\$5,000.00). Such sum shall be paid on or before January 9, 2004, provided H.O.P.E. is not then in default of this Contract.

IV. RESPONSIBILITY; INDEMNIFICATION

H.O.P.E. agrees to assume and does hereby assume all responsibility and liability for damages or injuries sustained by persons or property, whether real or asserted, by or from the performance of services performed and to be performed hereunder by H.O.P.E., its officials, officers, employees, agents, servants, invitees, contractors, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. H.O.P.E. covenants and agrees to and shall defend, indemnify and hold harmless the City, its officials, officers, agents and employees (together, "Indemnified Persons") against, and hold the Indemnified Persons harmless from, any and all liability, losses, penalties, claims, lawsuits, actions, causes of action, costs, expenses, or fees (including, without limitation, attorney's fees), breach of contract, or any other harm for which any type of recovery (whether at law, in equity, or otherwise) is sought (together, "Claims"), resulting from or based upon, in whole or in part, any act omission of H.O.P.E., its officials, officers, employees, agents, servants, invitees, contractors, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, under or in connection with this Contract, the performance thereof by H.O.P.E., or any of its activities, and regardless of whether or not any such Claims is caused in part by any of the Indemnified Persons. H.O.P.E. agrees to reimburse the City for all sums which the City may pay or may be paid on behalf of the City or which the City may be compelled to pay in settlement of any Claims, including without limitation any Claims under the provisions of any workers compensation law or other similar law. The provisions of this Section shall survive the termination or expiration of this Contract.

V. TERMINATION

This Contract may be canceled and terminated by either party at any time and for any reason upon giving at least thirty (30) days written notice of such cancellation and termination to the other party hereto. Such notice shall be sent certified mail, return receipt requested, and to the most recent address shown on the records of the party terminating the Contract. The thirty (30) day period shall commence upon deposit of the said notice in the United States mail and shall conclude at midnight of the 30th day thereafter. In the event of such cancellation and termination and if H.O.P.E. has failed at the time of such cancellation and termination to provide all of the services set forth herein, H.O.P.E. shall refund to the City that portion of funds paid to H.O.P.E. under the terms of this Contract in accordance with the following: Prorata funding returned to the City by H.O.P.E. shall be determined by dividing the amount paid by the City under this Contract by 365 (the "daily rate"), and then multiplying the daily rate by the number of days which would have remained in the term hereof but for the cancellation or termination. Upon payment or tender of such amount, all of the obligations of H.O.P.E. and the City under this Contract shall be discharged and terminated

(except as otherwise provided herein) and no action shall lie or accrue for additional benefit, consideration or value for or based upon the services performed under or pursuant to this Contract.

VI. CONFLICT OF INTEREST

(a) No officer or employee of the City shall have any interest or receive any benefit, direct or indirect, in this Contract or the proceeds thereof. This prohibition is not intended and should not be construed to preclude payment of expenses legitimately incurred by City officials in the conduct of the City's business. No officer or employee of H.O.P.E. shall have any financial interest, direct or indirect, in this Contract or the proceeds thereof.

(b) For purposes of this section, "benefit" means anything reasonably regarded as an economic advantage, including benefit to any other person in whose welfare the beneficiary is interested, but does not include contributions or expenditures made and reported in accordance with any law.

VII. ACCOUNTING

Prior to adopting its annual budget, H.O.P.E. shall submit for the City's review a budget showing the use of the City's funds provided pursuant to this Contract, and H.O.P.E. shall make such periodic reports to the City, as provided for herein, listing the expenditures made by H.O.P.E. from the funds provided by the City. The approval of H.O.P.E.'s annual budget creates a fiduciary duty in H.O.P.E. with respect to the funds provided by the City under this Contract.

The funds paid to H.O.P.E. pursuant to this Contract shall be maintained in a separate account established for that purpose and may not be commingled with any other money. Funds received hereunder from the City may be spent for day to day operations, supplies, salaries and other administrative costs provided that such costs are necessary for the promotion and encouragement of the purposes for which the funds may be used as described herein.

H.O.P.E. shall maintain complete and accurate financial records of all of its revenues, including, without limitation, each expenditure of revenue received pursuant to this Contract. By the twenty-first (21st) day after the close of each quarter (beginning with the quarter ending December 31, 2003, with the last quarter ending September 30, 2004), H.O.P.E. shall provide the City the following: (a) a detailed financial report for the previous quarter listing the expenditures made by H.O.P.E. of the funds paid to H.O.P.E. under this Contract; and (b) a year-to-date report of the expenditures made by H.O.P.E. of the funds paid to Dance Council under this Contract (and if this Contract is terminated prior to its expiration, H.O.P.E. shall provide such reports as set forth above for the period prior to the expiration for which reports have not been provided, and such obligation shall survive the termination hereof; and the obligation to provide the reports for the last quarter of this Contract shall survive the expiration of this Contract). On request of the City at any time, H.O.P.E. shall make its records available for inspection and review by the City or its designated representative(s). Within ninety (90) days of the end of H.O.P.E.'s fiscal year, H.O.P.E. shall provide the City with a financial statement signed by the Chairman of H.O.P.E.'s Board of Directors (or other person acceptable to the City) and audited by an independent Certified Public Accountant, setting forth H.O.P.E.'s income, expenses, assets and liabilities, and such obligation shall survive the termination or expiration of this Contract.

VIII. INDEPENDENT CONTRACTOR

In performing services under this Contract, the relationship between the City and H.O.P.E. is that of independent contractor, and the City and H.O.P.E. by the execution of this Contract do not change the independent status of H.O.P.E.. No term or provision of this Contract or action by H.O.P.E. in the performance of this Contract is intended nor shall be construed as making H.O.P.E. the agent, servant or employee of the City, or to create an employer-employee relationship, a joint venture relationship, or a joint enterprise relationship.

IX. NON-ASSIGNABILITY

H.O.P.E. may not and shall have no authority to assign, transfer, or otherwise convey by any means whatsoever this Contract or any of the rights, duties or responsibilities hereunder without obtaining the prior written approval of the City, and any attempted assignment, transfer, or other conveyance of this Contract without such approval shall be null and void and be cause for immediate termination of this Contract by the City.

X. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPRISE

Nothing contained in this Contract shall be deemed to constitute that the City and H.O.P.E. are partners or joint venturers with each other, or shall be construed or be deemed to establish that their relationship constitutes, or that this Contract creates, a joint enterprise.

XI. NON-DISCRIMINATION

During the term of this Contract, H.O.P.E. agrees that it shall not discriminate against any employee or applicant for employment because of race, age, color, sex or religion, ancestry, national origin, place of birth, or handicap.

XII. LEGAL COMPLIANCE; CONTRACT SUBJECT TO LAWS

H.O.P.E. shall observe and abide by, and this Contract is subject to, all applicable federal, state, and local (including the City) laws, rules, regulations, and policies (including, without limitation, the Charter and Ordinances of the City), as the same currently exist or as they may be hereafter amended.

XIII. VENUE; GOVERNING LAW

In the event of any action under this Contract, venue for all causes of action shall be instituted and maintained in Dallas County, Texas. The parties agree that the laws of the State of Texas shall govern and apply to the interpretation, validity and enforcement of this Contract; and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this Contract.

XIV. COUNTERPARTS

This Contract may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

XV. NO WAIVER; RIGHTS CUMULATIVE

The failure by either party to exercise any right or power, or option given to it by this Contract, or to insist upon strict compliance with the terms of this Contract, shall not constitute a waiver of the terms and conditions of this Contract with respect to any other or subsequent breach thereof, nor a waiver by such party of its rights at any time thereafter to require exact and strict compliance with all the terms hereof. The rights or remedies under this Contract are cumulative to any other rights or remedies, which may be granted by law.

XVI. NOTICES

All notices, communications and reports, required or permitted under this Contract shall be personally delivered or mailed to the respective parties using certified mail, return receipt requested, postage prepaid, at the addresses shown below. The City and H.O.P.E. agree to provide the other with written notification within five (5) days, if the address for notices, provided below, is changed. Notices by personal delivery shall be deemed delivered upon the date delivered; mailed notices shall be deemed communicated on the date shown on the return receipt. If no date is shown, the mailed notice shall be deemed communicated on the third (3rd) day after depositing the same in the United States mail.

The City's address:

Mario Canizares
Assistant to the City Manager
Town of Addison
5300 Belt Line Road
Dallas, Texas 75254

H.O.P.E.'s address:

3160 Commonwealth, Suite 160
Dallas, Texas 75247
Attn: Executive Director

XVII. SEVERABILITY

The terms of this Contract are severable, and if any section, paragraph, clause, or other portion of this Contract shall be found to be illegal, unlawful, unconstitutional or void for any reason, the balance of the Contract shall remain in full force and effect and the parties shall be deemed to have contracted as if said section, paragraph, clause or portion had not been in the Contract initially.

XVIII. AUTHORITY TO EXECUTE CONTRACT

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Contract on behalf of the parties hereto,

and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.

XIX. ENTIRE CONTRACT

This Contract represents the entire and integrated contract and agreement between the City and H.O.P.E. and supersedes all prior negotiations, representations and/or agreements, either written or oral. This Contract may be amended only by written instrument signed by both the City and H.O.P.E.

IN WITNESS THEREOF, the parties hereto have caused this Contract to be signed by their proper corporate officers as first above specified, and have caused their proper corporate seal to be hereto affixed the day and year first above written.

TOWN OF ADDISON, TEXAS

**HONORING OF PEOPLES
EVERYWHERE**

By: _____
Ron Whitehead, City Manager

By: _____

Chairman of the Board

ATTEST:

ATTEST:

By: _____
Carmen Moran, City Secretary

By: _____

Council Agenda Item: #2i**SUMMARY:**

To consider approval of the contracts for services between the Town of Addison and the non-profits agencies funded from the General Fund and Hotel Fund budgets. The agencies and the amounts were approved by the City Council and included in the adopted FY 2003/04 budget.

FINANCIAL IMPACT:

All contracts are fully funded within the General Fund and Hotel Fund budgets.

	General Fund	Hotel Fund
Budgeted Amount:	<u>\$82,500.00</u>	<u>\$20,100.00</u>
Cost:	<u>\$82,500.00</u>	<u>\$20,100.00</u>

BACKGROUND:

During the FY 2003/04 budget process, the City Council reviewed the following non-profit agencies and funding amounts for FY 2003/04. Attached are the contracts for the non-profits and minor changes have made to ensure consistency within the contracts and to reflect changes to performances and their dates as applicable.

General Fund:	Amount	Hotel Fund	Amount
Communities in Schools Dallas	\$40,000	Brookhaven College for the Arts	\$8,500
Senior Adult Services	\$15,000	Dance Council	\$6,600
Metrocrest Social Service Center	\$15,000	Repertory Company Theatre	\$5,000
H.O.P.E.	\$5,000		
The Family Place	\$5,000		
DFW International	\$2,500		
TOTAL	\$82,500	TOTAL	\$20,100

RECOMMENDATION:

It is recommended that the City Council approve the resolutions authorizing the City Manager to enter into contracts with the non-profits for the amounts listed above. These contracts shall be subject to final review and approval by the City Attorney to allow the flexibility to negotiate any minor changes as needed.

AGENCY	FY 2002/03 FUNDING LEVEL	FY 2003/04 FUNDING LEVEL
<i>GENERAL FUND:</i>		
Communities in Schools Dallas, Inc.	\$30,000	\$40,000
Senior Adult Services	\$15,000	\$15,000
Metrocrest Social Service Center +	\$15,000	\$15,000
Metrocrest Chamber of Commerce +	\$9,000	\$9,000
Special Care and Career Services	\$5,000	\$5,000
H.O.P.E.	\$5,000	\$5,000
The Family Place	\$5,000	\$5,000
DFW International *	\$0	\$2,500
Metrocrest Family Medical Clinic	\$0	\$0
SUBTOTAL	\$ 84,000	\$ 96,500
<i>HOTEL FUND:</i>		
WaterTower Theatre **	\$380,000	\$380,000
Texas Chamber Orchestra +	\$15,000	\$30,000
Brookhaven College Center for the Arts	\$8,500	\$8,500
Dance Council	\$6,700	\$6,600
Repertory Company Theatre	\$8,700	\$5,000
Nova Dancing Company (Barefoot Brigade) *	\$0	0
SUBTOTAL	\$ 418,900	\$ 430,100
GRAND TOTAL	\$ 502,900	\$ 526,600

* Indicates a first time request

** Request includes \$150,000 in potential Town "Matching Funds"

+ Indicates that the agency's funding amount was approved by City Council on 11/11/03

TOWN OF ADDISON, TEXAS

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING A CONTRACT FOR SERVICES WITH BROOKHAVEN COLLEGE CENTER FOR THE ARTS TO PERFORM CERTAIN SERVICES FOR THE CITY FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2004 AS SET FORTH AND DESCRIBED IN THE ATTACHED CONTRACT; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT ON BEHALF OF THE CITY; PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:

Section 1. The Contract for Services by and between the Town of Addison, Texas and Brookhaven College Center for the Arts for the fiscal year beginning October 1, 2003 and ending September 30, 2004, a true and correct copy of which Contract is attached hereto, is hereby approved.

Section 2. The City Manager is authorized and empowered to execute the said Contract for Services on behalf of the City and to take all steps necessary to carry out the terms thereof.

Section 3. This Resolution shall take effect from and after its date of adoption.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this _____ day of _____, 2003.

Mayor R. Scott Wheeler

ATTEST:

By: _____
Carmen Moran, City Secretary

APPROVED AS TO FORM:

By: _____
Ken Dippel, City Attorney

STATE OF TEXAS

§

CONTRACT FOR SERVICES

§

COUNTY OF DALLAS

§

This Contract for Services is made and entered into as of the 1st day of October, 2003 by and between the Town of Addison, Texas (the "City") and the Dallas County Community College District (on behalf of The Brookhaven College) ("Brookhaven"), a Texas political subdivision of higher education with its principal place of business in Addison, Dallas County, Texas.

WHEREAS, Brookhaven is a non-profit corporation which exists for the purpose of the development and advancement of theatre and drama in the City as well as to promote theatrical activities through numerous productions throughout the year; and

WHEREAS, Brookhaven's productions attract tourists to and encourages tourism in and around the City, and the City has an interest in attracting such tourists and promoting tourism to the area in order to receive the economic benefits associated therewith.; and

WHEREAS, it is the City's desire to encourage and promote the arts, including, without limitation, dance, drama and theatre; and

WHEREAS, the City is authorized to expend revenues from its hotel occupancy tax for the encouragement, promotion, improvement, and application of the arts, including, without limitation, dance, drama and theatre, and desires to encourage and promote the arts through the execution of this Contract for Services.

NOW THEREFORE, for and in consideration of the mutual covenants and agreements hereinafter set forth, the benefits flowing to each of the parties hereto, and other good and valuable consideration, the City and Brookhaven agree as follows:

I. TERM

The term of this Contract shall be for a period of one year from the 1st day of October, 2003 through the 30th day of September, 2004, except as otherwise provided for herein.

II. SERVICES

Brookhaven shall provide the following services to the City:

(a) Brookhaven will schedule nationally recognized artists to appear at Brookhaven College, thereby providing citizens of the City with convenient and high quality cultural events at Brookhaven College.

(b) Brookhaven will work with all hotels located within the City to generate awareness regarding the theatre and events taking place at the theatre during the term of this Contract.

(c) Brookhaven shall provide the City with recognition in all publicity, with a follow up report to the City regarding the events provided by Brookhaven.

(d) Brookhaven shall submit detailed quarterly financial statements and program results to the City within thirty (30) days after the end of the preceding quarter listing the expenditures made by Brookhaven with the revenues received pursuant to this Contract.

III. COMPENSATION

The City agrees to pay Brookhaven the sum of Eight Thousand Five Hundred and No/100 Dollars (\$8,500.00) for the services set forth herein. Payment shall be made to Brookhaven within a reasonable time following the receipt of an invoice from Brookhaven, provided Brookhaven is not then in default of this Contract.

IV. RESPONSIBILITY; INDEMNIFICATION

Brookhaven agrees to assume and does hereby assume all responsibility and liability for damages or injuries sustained by persons or property, whether real or asserted, by or from the performance of services performed and to be performed hereunder by Brookhaven, its officials, officers, employees, agents, servants, invitees, contractors, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. Brookhaven covenants and agrees to and shall defend, indemnify and hold harmless the City, its officials, officers, agents and employees (together, "Indemnified Persons") against, and hold the Indemnified Persons harmless from, any and all liability, losses, penalties, claims, lawsuits, actions, causes of action, costs, expenses, or fees (including, without limitation, attorney's fees), breach of contract, or any other harm for which any type of recovery (whether at law, in equity, or otherwise) is sought (together, "Claims"), resulting from or based upon, in whole or in part, any act omission of Brookhaven, its officials, officers, employees, agents, servants, invitees, contractors, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, under or in connection with this Contract, the performance thereof by Brookhaven, or any of its activities, and regardless of whether or not any such Claims is caused in part by any of the Indemnified Persons. Brookhaven agrees to reimburse the City for all sums which the City may pay or may be paid on behalf of the City or which the City may be compelled to pay in settlement of any Claims, including without limitation any Claims under the provisions of any workers compensation law or other similar law. The provisions of this Section shall survive the termination or expiration of this Contract.

V. TERMINATION

This Contract may be canceled and terminated by either party at any time and for any reason upon giving at least thirty (30) days written notice of such cancellation and termination to the other party hereto. Such notice shall be sent certified mail, return receipt requested, and to the most recent address shown on the records of the party terminating the Contract. The thirty (30) day period shall commence upon deposit of the said notice in the United States mail and shall conclude at midnight of the 30th day thereafter. In the event of such cancellation and termination and if Brookhaven has failed at the time of such cancellation and termination to provide all of the services set forth herein, Brookhaven shall refund to the City that portion of funds paid to Brookhaven under the terms of this Contract in accordance with the following: Prorata funding returned to the City by Brookhaven shall be determined by dividing the amount paid by the City under this Contract by 365 (the "daily rate"), and then multiplying the daily rate

by the number of days which would have remained in the term hereof but for the cancellation or termination. Upon payment or tender of such amount, all of the obligations of Brookhaven and the City under this Contract shall be discharged and terminated (except as otherwise provided herein) and no action shall lie or accrue for additional benefit, consideration or value for or based upon the services performed under or pursuant to this Contract.

VI. CONFLICT OF INTEREST

(A) No officer or employee of the City shall have any interest or receive any benefit, direct or indirect, in this Contract or the proceeds thereof. This prohibition is not intended and should not be construed to preclude payment of expenses legitimately incurred by City officials in the conduct of the City's business.

(B) For purposes of this section, "benefit" means anything reasonably regarded as an economic advantage, including benefit to any other person in whose welfare the beneficiary is interested, but does not include contributions or expenditures made and reported in accordance with any law.

VII. ACCOUNTING

Prior to adopting its annual budget, Brookhaven shall submit for the City's review a budget showing the use of the City's funds provided pursuant to this Contract, and Brookhaven shall make such periodic reports to the City, as provided for herein, listing the expenditures made by Brookhaven from the funds provided by the City. The approval of Brookhaven's annual budget creates a fiduciary duty in Brookhaven with respect to the funds provided by the City under this Contract.

The funds paid to Brookhaven pursuant to this Contract shall be maintained in a separate account established for that purpose and may not be commingled with any other money. Funds received hereunder from the City may be spent for day to day operations, supplies, salaries and other administrative costs provided that such costs are necessary for the promotion and encouragement of the purposes for which the funds may be used as described herein.

Brookhaven shall maintain complete and accurate financial records of all of its revenues, including, without limitation, each expenditure of revenue received pursuant to this Contract. By the twenty-first (21st) day after the close of each quarter (beginning with the quarter ending December 31, 2003, with the last quarter ending September 30, 2004), Brookhaven shall provide the City the following: (a) a detailed financial report for the previous quarter listing the expenditures made by Brookhaven of the funds paid to Brookhaven under this Contract; and (b) a year-to-date report of the expenditures made by Brookhaven of the funds paid to Dance Council under this Contract (and if this Contract is terminated prior to its expiration, Brookhaven shall provide such reports as set forth above for the period prior to the expiration for which reports have not been provided, and such obligation shall survive the termination hereof; and the obligation to provide the reports for the last quarter of this Contract shall survive the expiration of this Contract). On request of the City at any time, Brookhaven shall make its records available for inspection and review by the City or its designated representative(s). Within ninety (90) days of the end of Brookhaven's fiscal year, Brookhaven shall provide the City with a financial statement signed by the Chairman of Brookhaven's Board of Directors (or other person acceptable to the City) and audited by an

independent Certified Public Accountant, setting forth Brookhaven's income, expenses, assets and liabilities, and such obligation shall survive the termination or expiration of this Contract.

VIII. INDEPENDENT CONTRACTOR

In performing services under this Contract, the relationship between the City and Brookhaven is that of independent contractor, and the City and Brookhaven by the execution of this Contract do not change the independent status of Brookhaven. No term or provision of this Contract or action by Brookhaven in the performance of this Contract is intended nor shall be construed as making Brookhaven the agent, servant or employee of the City, or to create an employer-employee relationship, a joint venture relationship, or a joint enterprise relationship.

IX. NON-ASSIGNABILITY

Brookhaven may not and shall have no authority to assign, transfer, or otherwise convey by any means whatsoever this Contract or any of the rights, duties or responsibilities hereunder without obtaining the prior written approval of the City, and any attempted assignment, transfer, or other conveyance of this Contract without such approval shall be null and void and be cause for immediate termination of this Contract by the City.

X. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPRISE

Nothing contained in this Contract shall be deemed to constitute that the City and Brookhaven are partners or joint venturers with each other, or shall be construed or be deemed to establish that their relationship constitutes, or that this Contract creates, a joint enterprise.

XI. COPYRIGHT

Brookhaven assumes full responsibility for complying with all United States laws and treaty terms pertaining to intellectual property issues and any applicable regulations, including but not limited to the assumption of all responsibilities for paying all royalties which are due for the use of domestic or foreign copyrighted works in Brookhaven's performances, transmissions or broadcasts, and Brookhaven, without limiting any other indemnity given by Brookhaven as set forth herein, agrees to defend, indemnify, and hold harmless the City, its officials, officers, employees, and agents, for any liability, claims or damages (including but not limited to court costs and reasonable attorney's fees) growing out of Brookhaven's infringement or violation of any statute, treaty term or regulation applicable to intellectual property rights, including but not limited to copyrights.

XII. NON-DISCRIMINATION

During the term of this Contract, Brookhaven agrees that it shall not discriminate against any employee or applicant for employment because of race, age, color, sex or religion, ancestry, national origin, place of birth, or handicap.

XIII. LEGAL COMPLIANCE; CONTRACT SUBJECT TO LAWS

Brookhaven shall observe and abide by, and this Contract is subject to, all applicable federal, state, and local (including the City) laws, rules, regulations, and policies (including, without limitation, the Charter and Ordinances of the City), as the same currently exist or as they may be hereafter amended.

XIV. VENUE; GOVERNING LAW

In the event of any action under this Contract, venue for all causes of action shall be instituted and maintained in Dallas County, Texas. The parties agree that the laws of the State of Texas shall govern and apply to the interpretation, validity and enforcement of this Contract; and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this Contract.

XV. COUNTERPARTS

This Contract may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

XVI. NO WAIVER; RIGHTS CUMULATIVE

The failure by either party to exercise any right or power, or option given to it by this Contract, or to insist upon strict compliance with the terms of this Contract, shall not constitute a waiver of the terms and conditions of this Contract with respect to any other or subsequent breach thereof, nor a waiver by such party of its rights at any time thereafter to require exact and strict compliance with all the terms hereof. The rights or remedies under this Contract are cumulative to any other rights or remedies, which may be granted by law.

XVII. NOTICES

All notices, communications and reports, required or permitted under this Contract shall be personally delivered or mailed to the respective parties using certified mail, return receipt requested, postage prepaid, at the addresses shown below. The City and Brookhaven agree to provide the other with written notification within five (5) days, if the address for notices, provided below, is changed. Notices by personal delivery shall be deemed delivered upon the date delivered; mailed notices shall be deemed communicated on the date shown on the return receipt. If no date is shown, the mailed notice shall be deemed communicated on the third (3rd) day after depositing the same in the United States mail.

The City's address:

Mario Canizares
Assistant to the City Manager
Town of Addison
5300 Belt Line Road
Dallas, Texas 75254

Brookhaven's address:

President
Brookhaven College
3939 Valley View Lane
Farmers Branch, Texas 75244-4997

XVIII. SEVERABILITY

The terms of this Contract are severable, and if any section, paragraph, clause, or other portion of this Contract shall be found to be illegal, unlawful, unconstitutional or void for any reason, the balance of the Contract shall remain in full force and effect and the parties shall be deemed to have contracted as if said section, paragraph, clause or portion had not been in the Contract initially.

XIX. AUTHORITY TO EXECUTE CONTRACT

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Contract on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.

XX. ENTIRE AGREEMENT

This Contract represents the entire and integrated contract and agreement between the City and Brookhaven and supersedes all prior negotiations, representations and/or agreements, either written or oral. This Contract may be amended only by written instrument signed by both the City and Brookhaven.

IN WITNESS THEREOF, the parties hereto have caused this Contract to be signed by their proper corporate officers as first above specified, and have caused their proper corporate seal to be hereto affixed the day and year first above written.

TOWN OF ADDISON, TEXAS

**DALLAS COUNTY COMMUNITY
COLLEGE DISTRICT**

By: _____
Ron Whitehead, City Manager

By: _____

ATTEST:

ATTEST:

By: _____
Carmen Moran, City Secretary

By: _____

Council Agenda Item: #2j**SUMMARY:**

To consider approval of the contracts for services between the Town of Addison and the non-profits agencies funded from the General Fund and Hotel Fund budgets. The agencies and the amounts were approved by the City Council and included in the adopted FY 2003/04 budget.

FINANCIAL IMPACT:

All contracts are fully funded within the General Fund and Hotel Fund budgets.

	General Fund	Hotel Fund
Budgeted Amount:	<u>\$82,500.00</u>	<u>\$20,100.00</u>
Cost:	<u>\$82,500.00</u>	<u>\$20,100.00</u>

BACKGROUND:

During the FY 2003/04 budget process, the City Council reviewed the following non-profit agencies and funding amounts for FY 2003/04. Attached are the contracts for the non-profits and minor changes have made to ensure consistency within the contracts and to reflect changes to performances and their dates as applicable.

General Fund:	Amount	Hotel Fund	Amount
Communities in Schools Dallas	\$40,000	Brookhaven College for the Arts	\$8,500
Senior Adult Services	\$15,000	Dance Council	\$6,600
Metrocrest Social Service Center	\$15,000	Repertory Company Theatre	\$5,000
H.O.P.E.	\$5,000		
The Family Place	\$5,000		
DFW International	\$2,500		
TOTAL	\$82,500	TOTAL	\$20,100

RECOMMENDATION:

It is recommended that the City Council approve the resolutions authorizing the City Manager to enter into contracts with the non-profits for the amounts listed above. These contracts shall be subject to final review and approval by the City Attorney to allow the flexibility to negotiate any minor changes as needed.

AGENCY	FY 2002/03 FUNDING LEVEL	FY 2003/04 FUNDING LEVEL
<i>GENERAL FUND:</i>		
Communities in Schools Dallas, Inc.	\$30,000	\$40,000
Senior Adult Services	\$15,000	\$15,000
Metrocrest Social Service Center +	\$15,000	\$15,000
Metrocrest Chamber of Commerce +	\$9,000	\$9,000
Special Care and Career Services	\$5,000	\$5,000
H.O.P.E.	\$5,000	\$5,000
The Family Place	\$5,000	\$5,000
DFW International *	\$0	\$2,500
Metrocrest Family Medical Clinic	\$0	\$0
SUBTOTAL	\$ 84,000	\$ 96,500
<i>HOTEL FUND:</i>		
WaterTower Theatre **	\$380,000	\$380,000
Texas Chamber Orchestra +	\$15,000	\$30,000
Brookhaven College Center for the Arts	\$8,500	\$8,500
Dance Council	\$6,700	\$6,600
Repertory Company Theatre	\$8,700	\$5,000
Nova Dancing Company (Barefoot Brigade) *	\$0	0
SUBTOTAL	\$ 418,900	\$ 430,100
GRAND TOTAL	\$ 502,900	\$ 526,600

* Indicates a first time request

** Request includes \$150,000 in potential Town "Matching Funds"

+ Indicates that the agency's funding amount was approved by City Council on 11/11/03

TOWN OF ADDISON, TEXAS

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING A CONTRACT FOR SERVICES WITH DFW INTERNATIONAL TO PERFORM CERTAIN SERVICES FOR THE CITY FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2004 AS SET FORTH AND DESCRIBED IN THE ATTACHED CONTRACT; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT ON BEHALF OF THE CITY; PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:

Section 1. The Contract for Services by and between the Town of Addison, Texas and DFW International for the fiscal year beginning October 1, 2003 and ending September 30, 2004, a true and correct copy of which Contract is attached hereto, is hereby approved.

Section 2. The City Manager is authorized and empowered to execute the said Contract for Services on behalf of the City and to take all steps necessary to carry out the terms thereof.

Section 3. This Resolution shall take effect from and after its date of adoption.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this _____ day of _____, 2003.

Mayor R. Scott Wheeler

ATTEST:

By: _____
Carmen Moran, City Secretary

APPROVED AS TO FORM:

By: _____
Ken Dippel, City Attorney

STATE OF TEXAS

§

CONTRACT FOR SERVICES

COUNTY OF DALLAS

§

§

This Contract for Services is made and entered into as of the 1st day of October, 2003 by and between the Town of Addison, Texas (the "City") and DFW International ("DFW").

WITNESSETH:

WHEREAS, DFW is a private, non-profit organization established under the laws of the State of Texas for the purpose of promoting North Texas ethnic and immigrant groups since 1996; and

WHEREAS, the success or failure of the purposes and objectives of DFW has an impact on the social health and welfare of the citizens of the City; and

WHEREAS, the City has full power of local self government, has authority to contract with other persons, has authority to adopt regulations that are for the good government, peace, and order of the City, has authority to enforce laws reasonably necessary to protect the public health, and the services provided by DFW hereunder are in the public interest and are for, constitute and serve a public purpose in promoting the health and welfare of the citizens of the City.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements hereinafter set forth, the benefits flowing to each of the parties hereto, and other good and valuable consideration, the Town of Addison, Texas and DFW International do hereby contract, covenant and agree as follows:

I. TERM

The term of this Contract shall be for a period of one year from the 1st day of October, 2003 through the 30th day of September, 2004, except as otherwise provided for herein.

II. SERVICES

DFW covenants and agrees that it shall:

(a) Promote and link North Texas ethnic and immigrant groups, empowering them as respected members of the community and providing forums through which to express, share and celebrate the richness of their cultural heritages;

(b) Maintain an inclusive, multi-ethnic organization that builds strong communities and integrates ethnic groups into the main stream, thus delivering sustainable economic growth throughout the North Texas region. Its projects focus on communication, cultural celebrations, advocacy, analysis and research, education, and unity;

(c) Submit detailed quarterly financial statements and program results to the City within thirty (30) days after the end of the preceding quarter listing the expenditures made by DFW with the revenues received pursuant to this Contract.

III. COMPENSATION

For the operation and provision of the services, projects and programs of DFW as described herein, the City shall pay DFW the sum of Two Thousand Five Hundred and No/100 Dollars (\$2,500.00). Such sum shall be paid on or before January 9, 2004, provided DFW is not then in default of this Contract.

IV. RESPONSIBILITY; INDEMNIFICATION

DFW agrees to assume and does hereby assume all responsibility and liability for damages or injuries sustained by persons or property, whether real or asserted, by or from the performance of services performed and to be performed hereunder by DFW, its officials, officers, employees, agents, servants, invitees, contractors, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. DFW covenants and agrees to and shall defend, indemnify and hold harmless the City, its officials, officers, agents and employees (together, "Indemnified Persons") against, and hold the Indemnified Persons harmless from, any and all liability, losses, penalties, claims, lawsuits, actions, causes of action, costs, expenses, or fees (including, without limitation, attorney's fees), breach of contract, or any other harm for which any type of recovery (whether at law, in equity, or otherwise) is sought (together, "Claims"), resulting from or based upon, in whole or in part, any act omission of DFW, its officials, officers, employees, agents, servants, invitees, contractors, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, under or in connection with this Contract, the performance thereof by DFW, or any of its activities, and regardless of whether or not any such Claims is caused in part by any of the Indemnified Persons. DFW agrees to reimburse the City for all sums which the City may pay or may be paid on behalf of the City or which the City may be compelled to pay in settlement of any Claims, including without limitation any Claims under the provisions of any workers compensation law or other similar law. The provisions of this Section shall survive the termination or expiration of this Contract.

V. TERMINATION

This Contract may be canceled and terminated by either party at any time and for any reason upon giving at least thirty (30) days written notice of such cancellation and termination to the other party hereto. Such notice shall be sent certified mail, return receipt requested, and to the most recent address shown on the records of the party terminating the Contract. The thirty (30) day period shall commence upon deposit of the said notice in the United States mail and shall conclude at midnight of the 30th day thereafter. In the event of such cancellation and termination and if DFW has failed at the time of such cancellation and termination to provide all of the services set forth herein, DFW shall refund to the City that portion of funds paid to DFW under the terms of this Contract in accordance with the following: Prorata funding returned to the City by DFW shall be determined by dividing the amount paid by the City under this Contract by 365 (the "daily rate"), and then multiplying the daily rate by the number of days which would have remained in the term hereof but for the cancellation or termination. Upon payment or tender of such amount, all of the

obligations of DFW and the City under this Contract shall be discharged and terminated (except as otherwise provided herein) and no action shall lie or accrue for additional benefit, consideration or value for or based upon the services performed under or pursuant to this Contract.

VI. CONFLICT OF INTEREST

(a) No officer or employee of the City shall have any interest or receive any benefit, direct or indirect, in this Contract or the proceeds thereof. This prohibition is not intended and should not be construed to preclude payment of expenses legitimately incurred by City officials in the conduct of the City's business. No officer or employee of DFW shall have any financial interest, direct or indirect, in this Contract or the proceeds thereof.

(b) For purposes of this section, "benefit" means anything reasonably regarded as an economic advantage, including benefit to any other person in whose welfare the beneficiary is interested, but does not include contributions or expenditures made and reported in accordance with any law.

VII. ACCOUNTING

Prior to adopting its annual budget, DFW shall submit for the City's review a budget showing the use of the City's funds provided pursuant to this Contract, and DFW shall make such periodic reports to the City, as provided for herein, listing the expenditures made by DFW from the funds provided by the City. The approval of DFW's annual budget creates a fiduciary duty in DFW with respect to the funds provided by the City under this Contract.

The funds paid to DFW pursuant to this Contract shall be maintained in a separate account established for that purpose and may not be commingled with any other money. Funds received hereunder from the City may be spent for day to day operations, supplies, salaries and other administrative costs provided that such costs are necessary for the promotion and encouragement of the purposes for which the funds may be used as described herein.

DFW shall maintain complete and accurate financial records of all of its revenues, including, without limitation, each expenditure of revenue received pursuant to this Contract. By the twenty-first (21st) day after the close of each quarter (beginning with the quarter ending December 31, 2003, with the last quarter ending September 30, 2004), DFW shall provide the City the following: (a) a detailed financial report for the previous quarter listing the expenditures made by DFW of the funds paid to DFW under this Contract; and (b) a year-to-date report of the expenditures made by DFW of the funds paid to Dance Council under this Contract (and if this Contract is terminated prior to its expiration, DFW shall provide such reports as set forth above for the period prior to the expiration for which reports have not been provided, and such obligation shall survive the termination hereof; and the obligation to provide the reports for the last quarter of this Contract shall survive the expiration of this Contract). On request of the City at any time, DFW shall make its records available for inspection and review by the City or its designated representative(s). Within ninety (90) days of the end of DFW's fiscal year, DFW shall provide the City with a financial statement signed by the Chairman of DFW's Board of Directors (or other person acceptable to the City) and audited by an independent Certified Public Accountant, setting

forth DFW's income, expenses, assets and liabilities, and such obligation shall survive the termination or expiration of this Contract.

VIII. INDEPENDENT CONTRACTOR

In performing services under this Contract, the relationship between the City and DFW is that of independent contractor, and the City and DFW by the execution of this Contract do not change the independent status of DFW. No term or provision of this Contract or action by DFW in the performance of this Contract is intended nor shall be construed as making DFW the agent, servant or employee of the City, or to create an employer-employee relationship, a joint venture relationship, or a joint enterprise relationship.

IX. NON-ASSIGNABILITY

DFW may not and shall have no authority to assign, transfer, or otherwise convey by any means whatsoever this Contract or any of the rights, duties or responsibilities hereunder without obtaining the prior written approval of the City, and any attempted assignment, transfer, or other conveyance of this Contract without such approval shall be null and void and be cause for immediate termination of this Contract by the City.

X. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPRISE

Nothing contained in this Contract shall be deemed to constitute that the City and DFW are partners or joint venturers with each other, or shall be construed or be deemed to establish that their relationship constitutes, or that this Contract creates, a joint enterprise.

XI. NON-DISCRIMINATION

During the term of this Contract, DFW agrees that it shall not discriminate against any employee or applicant for employment because of race, age, color, sex or religion, ancestry, national origin, place of birth, or handicap.

XII. LEGAL COMPLIANCE; CONTRACT SUBJECT TO LAWS

DFW shall observe and abide by, and this Contract is subject to, all applicable federal, state, and local (including the City) laws, rules, regulations, and policies (including, without limitation, the Charter and Ordinances of the City), as the same currently exist or as they may be hereafter amended.

XIII. VENUE; GOVERNING LAW

In the event of any action under this Contract, venue for all causes of action shall be instituted and maintained in Dallas County, Texas. The parties agree that the laws of the State of Texas shall govern and apply to the interpretation, validity and enforcement of this Contract; and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this Contract.

XIV. COUNTERPARTS

This Contract may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

XV. NO WAIVER; RIGHTS CUMULATIVE

The failure by either party to exercise any right or power, or option given to it by this Contract, or to insist upon strict compliance with the terms of this Contract, shall not constitute a waiver of the terms and conditions of this Contract with respect to any other or subsequent breach thereof, nor a waiver by such party of its rights at any time thereafter to require exact and strict compliance with all the terms hereof. The rights or remedies under this Contract are cumulative to any other rights or remedies, which may be granted by law.

XVI. NOTICES

All notices, communications and reports, required or permitted under this Contract shall be personally delivered or mailed to the respective parties using certified mail, return receipt requested, postage prepaid, at the addresses shown below. The City and DFW agree to provide the other with written notification within five (5) days, if the address for notices, provided below, is changed. Notices by personal delivery shall be deemed delivered upon the date delivered; mailed notices shall be deemed communicated on the date shown on the return receipt. If no date is shown, the mailed notice shall be deemed communicated on the third (3rd) day after depositing the same in the United States mail.

The City's address:

Mario Canizares
Assistant to the City Manager
Town of Addison
5300 Belt Line Road
Dallas, Texas 75254

DFW's address:

Attn: _____

XVII. SEVERABILITY

The terms of this Contract are severable, and if any section, paragraph, clause, or other portion of this Contract shall be found to be illegal, unlawful, unconstitutional or void for any reason, the balance of the Contract shall remain in full force and effect and the parties shall be deemed to have contracted as if said section, paragraph, clause or portion had not been in the Contract initially.

XVIII. AUTHORITY TO EXECUTE CONTRACT

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Contract on behalf of the parties hereto,

and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.

XIX. ENTIRE CONTRACT

This Contract represents the entire and integrated contract and agreement between the City and DFW and supersedes all prior negotiations, representations and/or agreements, either written or oral. This Contract may be amended only by written instrument signed by both the City and DFW

IN WITNESS THEREOF, the parties hereto have caused this Contract to be signed by their proper corporate officers as first above specified, and have caused their proper corporate seal to be hereto affixed the day and year first above written.

TOWN OF ADDISON, TEXAS

DFW INTERNATIONAL

By: _____
Ron Whitehead, City Manager

By: _____
(typed name)

Signature: _____
Title: _____

ATTEST:

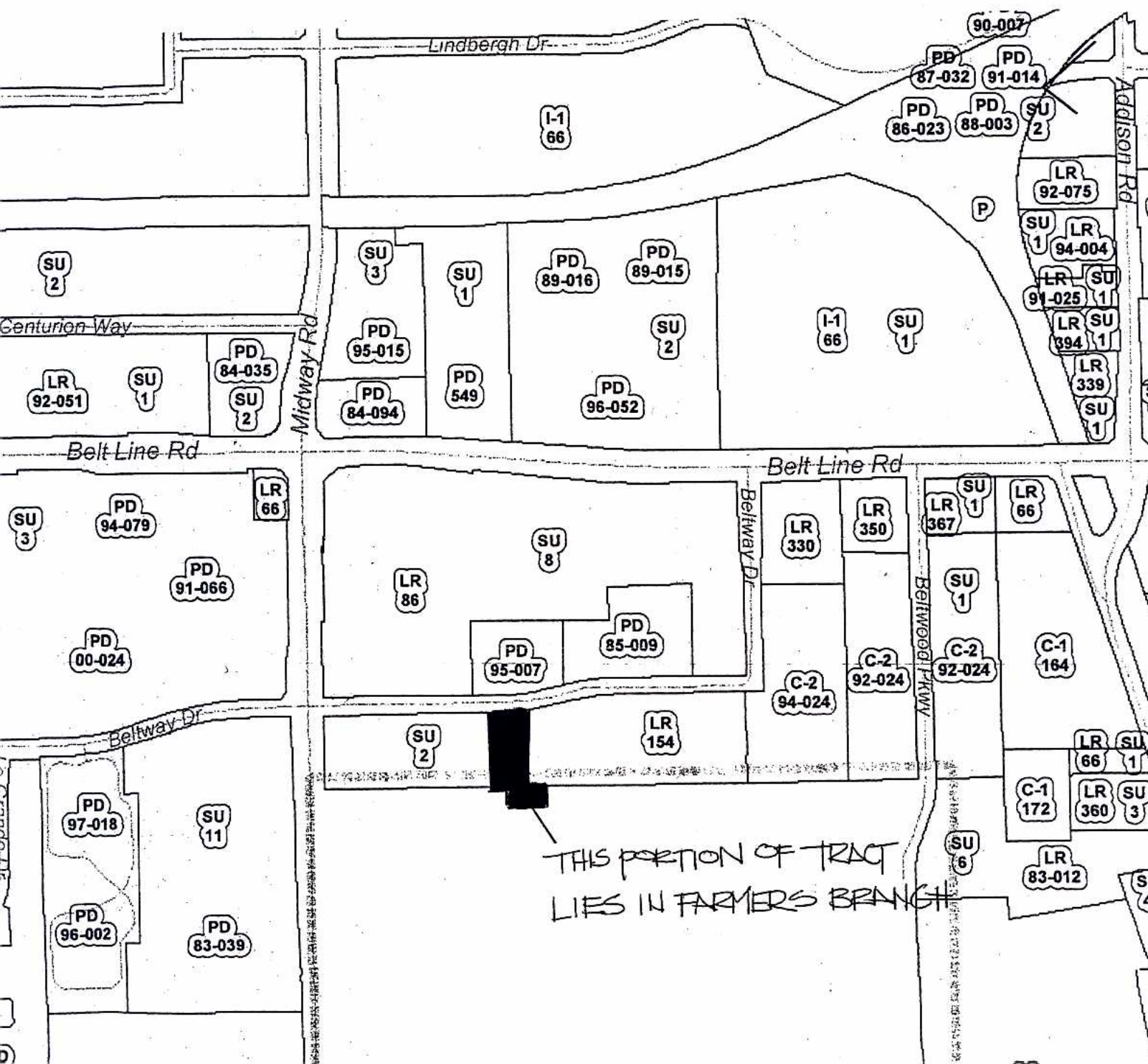
ATTEST:

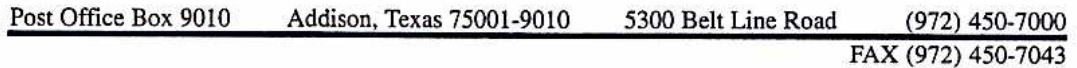
By: _____
Carmen Moran, City Secretary

By: _____

FINAL PLAT/Lot 2, Block A, Advantage-Compass Addition

FINAL PLAT/Lot 2, Block A, Advantage-Compass Addition. Requesting approval of a final plat for one lot of .924 acres, located at 4300 Beltway Drive, on application from Richard and Pam Davis, represented by Mr. David B. Reaves of Grant Engineering.





50 YEARS OF FUN!

- a. Individual legal descriptions should be provided for Lot 2, Beltway Office Park in Addison, and Lot 1, Block A, Beltwood Business Park in Farmers Branch, on page 1 of 2.
- b. South line of Lot 2, within the Town of Addison should be clearly marked with bearing and distance on page 2 of 2 on the plat.
- c. Page 2 of 2 should be changed to page 1 of 2. (This has been corrected)

- d. The northeast corner of Lot 1, Block A shows a "square" that is not marked or described. This must be addressed or removed.
- e. Legal description on current page 1 of 2 is not necessary with the plat on current page 2 of 2.
- f. Site/Civil drawings must be prepared and approved by the Town in advance of any construction improvements on-site and off-site. Any revisions to the existing water, sewer, drainage and paving infrastructure may require new utility or access easements.
- g. Joint approval of all Site/Civil drawings by Farmers Branch is required.

RECOMMENDATION:

Staff recommends approval subject to the conditions listed above.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'C Moran', with a stylized flourish at the end.

Carmen Moran
Director of Development Services

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on October 23, 2003, voted to recommend approval of the final plat for Advantage-Compass Addition, subject to the following conditions:

- a. Individual legal descriptions should be provided for Lot 2, Beltway Office Park in Addison, and Lot 1, Block A, Beltwood Business Park in Farmers Branch, on page 1 of 2.
- b. South line of Lot 2, within the Town of Addison should be clearly marked with bearing and distance on page 2 of 2 on the plat.
- c. Page 2 of 2 should be changed to page 1 of 2. (This has been corrected)
- d. The northeast corner of Lot 1, Block A shows a "square" that is not marked or described. This must be addressed or removed.
- e. Legal description on current page 1 of 2 is not necessary with the plat on current page 2 of 2.
- f. Site/Civil drawings must be prepared and approved by the Town in advance of any construction improvements on-site and off-site. Any revisions to the existing water, sewer, drainage and paving infrastructure may require new utility or access easements.
- g. Joint approval of all Site/Civil drawings by Farmers Branch is required.

Voting Aye: Bernstein, Braun, Doepfner, Herrick

Voting Nay: None

Absent: Benjet, Jandura

**THIS ITEM NOT
AVAILABLE
ELECTRONICALLY**



#R4-1

Addison 50!

50 YEARS OF FUN!

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MEMORANDUM

DATE: November 18, 2003

TO: Ron Whitehead, City Manager

FROM: Carmen Moran, Director of Development Services

SUBJECT: Amendment to Master Facilities Agreement for
Funding of Public Infrastructure in Addison Circle

BACKGROUND

In 1995 the Town entered into an agreement a Master Facilities Agreement to facilitate the construction of public infrastructure improvements within the Addison Circle District. There were three parties to the agreement: the Town, Columbus Realty Trust, and Gaylord Properties. The agreement spelled out the terms through which the Town would spend \$9 million to build public improvements in the district. In return, the other parties would dedicate the land for the improvements, participate in the costs, and build residential and commercial developments in Addison Circle. To date, three phases have been built in Addison Circle. The Town has spent \$6,860,055 and Phases 1, 2a, and 2b total almost 1,300 residential units.

The Master Facilities Agreement has been amended two previous times to provide for changes in the way funds were allocated. Columbus Realty Trust (which became Post Properties) and Gaylord Properties have both sold their interests in Addison Circle to TexOK Properties. However, the terms of the agreement were transferable to the new owner and the agreement is still in place.

At this point, TexOK Properties is selling the remaining land in Addison Circle, to NewSource Capital, L.P. NewSource Capital is planning to immediately sell two tracts to separate owners. CityHomes is planning to build a town home development on the east side of Quorum Drive, and Fairfield Residential is looking to build a multi-family development on the west side of Quorum Drive. NewSource Capital, CityHomes, and Fairfield Residential are now looking to the Town to spend the \$2,139,945 that remains to be spent in the district on public infrastructure.

CONSTRUCTION PHASING

The Master Facilities Agreement undertook the difficult job of anticipating construction costs for infrastructure that would be built in the future. The Town, Gaylord, and Columbus expected that Addison Circle would build out in phases over 10 to 15 years, and the agreement attempted to schedule what improvements would be built in what sequence. The improvements that have been constructed under the Agreement are shown on the attached map.

PARK FUNDING

The Urban Center ordinance lays out very specific standards for the sidewalks, lighting, and landscaping for the streets. Therefore, the Town and developers can both be assured that the future streets, regardless of how they are funded, will be developed to the same standard as the existing streets. However, the parks have not yet been designed. Gaylord and Columbus wanted to be sure that they would be of the same quality of Bosque Park and Esplanade Park. Therefore, the budgets for the two remaining parks were set with ranges for a minimum and maximum to be spent. The range for Quorum North Park (.69 acres) was \$290,000 to \$300,000, and the range for Mews Park (1.43 acres) was \$650,000 to \$700,000. These amounts are specified in the agreement. However, the amounts for streets were only guidelines, and the funds could be moved around among the streets as long as \$9 million dollars total was spent in the district.

SPECTRUM DRIVE

In 1995, the three parties to the agreement anticipated that Columbus Realty (now Post Properties) and Gaylord Properties would construct the infrastructure improvements, with city funding, as projects came on line. However, after Phase 2b in 1999, Post and Gaylord decided to quit building apartments in Addison Circle because the Metroplex had hit an economic slump. The Town was sorry to see construction stop in Addison Circle; however, the Town typically takes advantage of slower times in the economy to get infrastructure built because it can get better construction bids. The record-low interest rates for bonds made the idea of building even more appealing. The Town decided to sell bonds to build street improvements, and Spectrum Drive was one of the proposed bond projects.

The Town had three reasons for wanting to push up the schedule for Spectrum. First, it felt that if it could get Spectrum built, it would encourage developers to begin building in Addison Circle again. Second, Spectrum will ultimately connect south to Arapaho Road and north to Airport Parkway. The Town would like to get Spectrum built so that it can provide an alternative way in and out of the neighborhood for residents, thus allowing Quorum Drive to be closed for Special events such as Oktoberfest and Kaboom Town. Third, the merchants around Esplanade Park were complaining to the staff because they felt there were not enough on-street parking spaces in Addison Circle. The Town

redesigned Spectrum to provide for head-in parking up both sides of the street, and it wanted to get the additional parking spaces in place to help the merchants.

However, the Agreement listed \$364,000 to be spent on Spectrum Drive, of which approximately \$150,000 remained. The other two parties to the agreement were to pay the remainder, and in order to get the street built, the Town needed them to contribute. The Town began conversations last year with TexOK Properties as to how the road would be funded. TexOK dedicated all the right-of-way needed for the portion of Spectrum that is within the Addison Circle District, but stated that NewSource Capital would pay for Spectrum.

The Town then began conversations with NewSource Capital, which indicated it was planning to defer the funding obligations to the end users, CityHomes and Fairfield Residential. The Town then began conversations with those groups, and both stated that they would like for the Town to "front the money" for Spectrum and they would pay the funds back over time, possibly through a pro-rata assessment with funds due at the issuance of building permits. This plan would mean that the Town might not get paid back for Spectrum for many years, and keeping up with the assessments would be time consuming for both the Building Inspection and Accounting staffs. However, the Town still felt that the timing was still right to build Spectrum, and it began to design and engineer the street. The street has now been designed, and the estimated cost for the portion of Spectrum Drive that is within the Addison Circle district, and thus to be partially funded by developers is \$1,157,000. The Town has approximately \$150,000 left to spend on Spectrum, which means that the other parties to the agreement need to pay the Town \$1 million.

CITYHOMES PLAN

While the Town was having conversations with NewSource Capital about Spectrum, it was also talking about the streets that would be built within the CityHomes and Fairfield developments. Under the Agreement, NewSource Capital (ultimately CityHomes and Fairfield), is entitled to approximately \$1,000,000 in city funding toward the construction of its streets. In a typical development scenario, each developer would build the streets, using contractors it selects, and then dedicate them to the Town once they are finished. However, since the Town would be spending public funds on these streets, it would have to go through the public bidding process. The Town could then assign the contract to the developer to manage. All the streets that are currently in Addison Circle were built through this process.

While CityHomes welcomes the Town's funds, it would prefer to not have to bid the streets because CityHomes (a subsidiary of Centex) is a nationwide company, and it has relationships with contractors that give it volume discounts on construction. CityHomes feels it can build the streets cheaper (though still to the Addison Circle standards) if it uses its own contractors. CityHomes asked the Town if the funds it was going to spend on the interior streets could be all allocated to one street. If so, then CityHomes would build the other streets and they would not have to bid.

THE SIMPLE PLAN

At this point, the staff hit on what is being called "The Simple Plan." The staff spent several days figuring out how much money it wanted to get from the developers to fund Spectrum, and how much it was going to give to developers for streets and parks. When CityHomes asked if all the money could be spent on one street, the staff realized that the Town was going to be handing the developers about the same amount of money that it hoped to get paid back. The staff realized that if we all just kept our own money, the Town could build Spectrum, CityHomes and Fairfield could build all the internal streets, using their own contractors, and we would end up in the same place.

Under the Simple Plan, the Town builds all of Spectrum Drive, the Mews Park in the amount of \$290,000, and the Quorum North Park in the amount of \$650,000. The developers, at their own cost, must build the remaining streets in the district. Once Spectrum and the parks are constructed, the Town will have spent \$9,000,000 in the district and fulfilled all its obligations under the Master Facilities Agreement.

The Simple Plan benefits the Town because it no longer has to "front the money" for Spectrum. Although the Town might get CityHomes' money for Spectrum within the next couple of years, it could wait many more years for the remaining \$500,000. In addition, it would take new legal agreements (which cost money to prepare) to set up the pro rata schemes, and it would be cumbersome to keep up with the accounting of bits of money paid back over several years.

The Simple Plan benefits the developers because it helps get Spectrum built now as opposed to later. It also keeps the remaining land in Addison Circle from being encumbered with a debt that future developers would have to pay. It also keeps the developers from having to bid the street construction as a public project, which makes building the streets easier, faster, and cheaper.

FAIRFIELD RESIDENTIAL

The Town discussed the Simple Plan with NewSource Capital, and it was on board with the plan, except that under the Simple Plan, all of the Town's remaining street funds will be spent on Spectrum Drive. Under the more complicated scheme, CityHomes would get the great majority of the funds because it abutted Spectrum Drive, but the Town was planning to allocate some money toward the improvement of the west side of Quorum Drive. NewSource believes the allocation of some money for Quorum is essential in making the deal on the west side of Quorum Drive work, and thus allowing Fairfield Residential to develop that tract within the next year. It is estimated to cost \$404,847 to provide paving, streetscape, drainage, wastewater, water, and electrical improvements for the west side of Quorum Drive, and Fairfield Residential is willing to contribute \$184,447 toward the project. The Town would pay the remaining \$220,400 and would manage the project. The project will not be started until Fairfield pays its share.

As noted above, the Town changed the design for Spectrum Drive to add head-in parking. The additional paving and streetscape have made the street more expensive. If the Town had not changed the design, and thus made the street more expensive, there would be some money left in the \$9 million to be spent on Quorum Drive. Although the additional \$220,400 would take funding in Addison Circle beyond the \$9 million anticipated by the original Master Facilities Agreement, the staff believes the additional funds are a good investment in the Addison Circle infrastructure for a couple of reasons.

First, this additional investment would allow the remaining nine acres in the district to be developed, and would finish out the original Addison Circle district. Addison Circle is a great place, but it needs more people living there to become a real, vibrant community. These additional people make the merchants more successful and keep the unique, pedestrian-oriented atmosphere of Addison Circle working. Fairfield Residential is proposing to build a high-density multi-family product, similar to the existing Post Properties product in Addison Circle, and the staff believes that is a good product for the remaining tract.

Second, while the staff is excited to have the owner-occupied town homes that CityHomes is planning to build, it realizes that as homeowners move into Addison Circle, developing the community will get more difficult. It was already more difficult for CityHomes because it had to build across from six homeowners. If the Fairfield deal goes away and the 183 proposed town homes get built, it may be very difficult to get a multi-family deal done across the street at a later date. Homeowners always seem to want to live next to the same sort of home they live in, and although the Town has always envisioned Addison Circle as a high-density, mixed-density development, that vision could be changed in the future by homeowners living in the neighborhood. The staff has recently seen homeowner opposition change plans for both to the Village on the Parkway redevelopment and the Master Plan amendment for Greenhill School. The Fairfield development is consistent with the Town's vision for the western tract, and it would be nice to get the piece developed before the vision gets changed.

SUMMARY

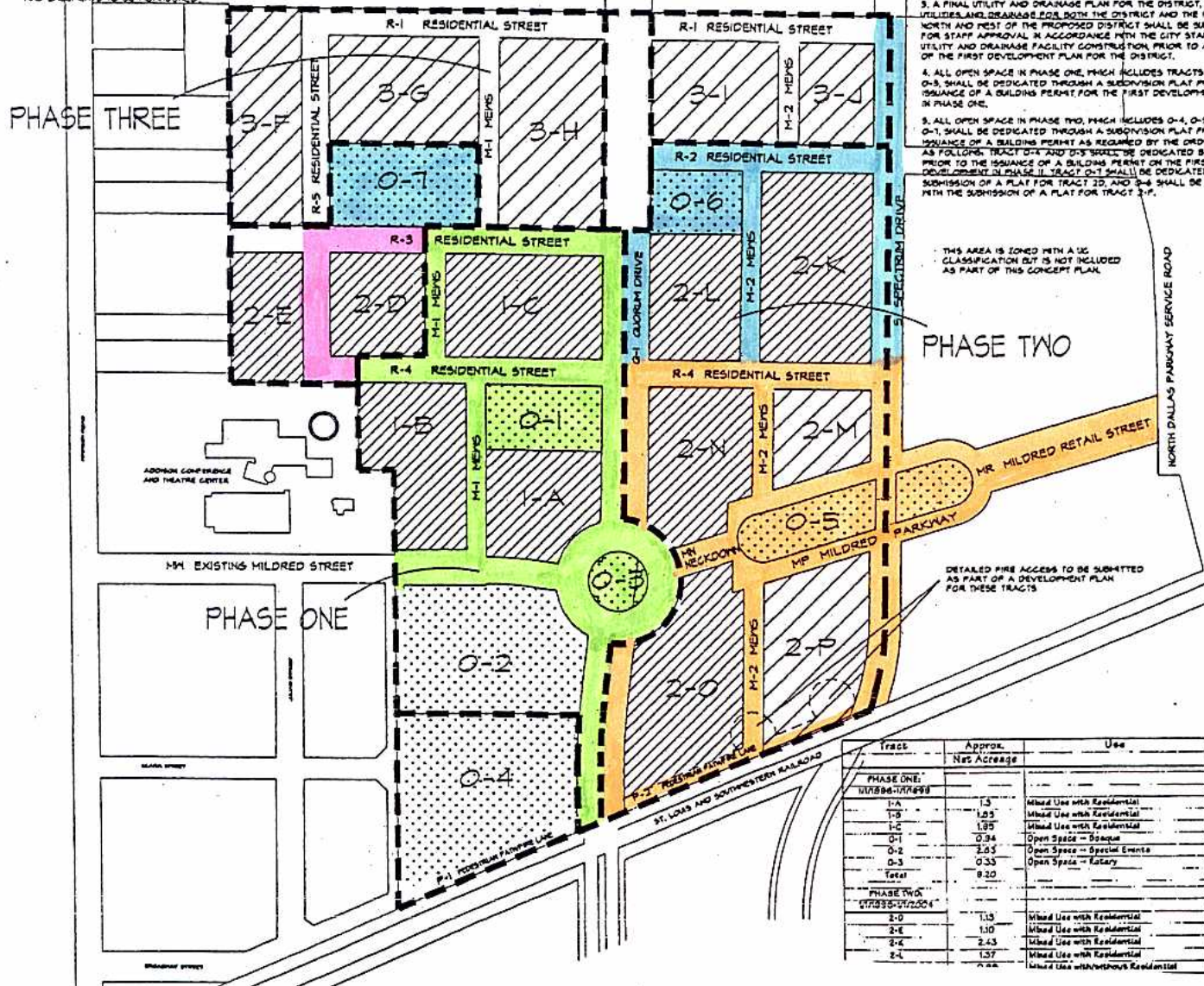
The staff is very excited to have developers wanting to build in Addison Circle again. Staff believes that with the Simple Plan that has been outlined above, the original Addison Circle improvement district could be built out within the next couple of years. The Simple Plan also allows the Town to build Spectrum Drive now without having to wait for property-owner participation. It also allows the developers to build their internal streets faster and more efficiently. The CityHomes and Fairfield developments will bring an estimated \$60 million in ad valorem taxable value to Addison. In addition, they will bring residents, and their sales tax dollars, to Addison Circle and the rest of the Town. For the many reasons listed throughout this memo, the staff recommends the Council approve the Simple Plan, which is described in the Third Amendment to the Master Facilities Agreement.

REQUIREMENTS:

PURSUANT TO SECTION 1.01.N OF THE URBAN CENTER DISTRICT REGULATIONS, THE APPLICANT SHALL PREPARE A CONCEPT PLAN SUPPLEMENTAL TO THE FOLLOWING VARIATIONS AND ALTERATIONS FROM THE PROPOSED CONCEPT PLAN SUBMITTAL:



1. MIX OF USES FOR SEPARATE PHASES.
2. FLOOR AREAS BY CATEGORY OF USE.
3. LOCATIONS OF PRIVATE RECREATION AREAS.
4. A DETAILED TIME SCHEDULE FOR PHASES AND ALTERNATIVE USES. THIS CONCEPT PLAN INCLUDES A GENERAL TIME SCHEDULE AND PHASING - FOR THE ENTIRE PROJECT.
5. STREET ADDRESSES, NAMES OF STREETS, STREET NUMBERING, FINAL LOCATION OF WALKING STREETS (BOTHIN LOCATION OF WIDE STREETS AND ALTERNATIVE LOCATIONS), AND OTHER DETAILS REGARDING RIGHTS-OF-WAY AND ACCESS TO THE PROJECT.

1. ALL STREET DESIGNATIONS THAT ARE NOT WITHIN THE BOUNDARIES OF THE DISTRICT HAVE NO EFFECT, AND DO NOT COMMIT THE CITY, OR AGENCIES, TO ENTER INTO OR OBTAIN R.O.L. OR PARTICIPATE IN THE CONSTRUCTION OF SUCH STREET.
2. A FINAL STREET DESIGN PLAN FOR THE DISTRICT, ADDRESSING FINAL STREET LOCATIONS, LAYOUT, INTERSECTION RADII, ROTARY DESIGN, SPECTRUM ROAD CROSSINGS OF RAILROADS, LANE, DEAD-END STREETS, AND SIMILAR CONSIDERATIONS SHOWN ON THE STREET DESIGN AND LAY-OUT FOR THE DISTRICT, SHALL BE SUBMITTED TO THE CITY ENGINEER FOR REVIEW WITHIN STANDARDS SET BY THE CITY'S SUBDIVISION ORDINANCE AND FIRE CODE PRIOR TO APPROVAL OF THE FIRST DEVELOPMENT PLAN FOR THE DISTRICT.
3. A FINAL UTILITY AND DRAINAGE PLAN FOR THE DISTRICT, ADDRESSING UTILITIES AND DRAINAGE FOR BOTH THE DISTRICT AND THE PROPERTIES ADJACENT TO THE DISTRICT, SHALL BE SUBMITTED TO THE CITY ENGINEER FOR STAFF APPROVAL IN ACCORDANCE WITH THE CITY STANDARDS FOR UTILITY AND DRAINAGE FACILITY CONSTRUCTION, PRIOR TO APPROVAL OF THE FIRST DEVELOPMENT PLAN FOR THE DISTRICT.
4. ALL OPEN SPACE IN PHASE ONE, WHICH INCLUDES TRACTS O-1, O-2, AND O-3, SHALL BE DEDICATED THROUGH A SUBDIVISION PLAT PERMIT TO THE ISSUANCE OF A BUILDING PERMIT FOR THE FIRST DEVELOPMENT IN PHASE ONE.
5. ALL OPEN SPACE IN PHASE TWO, WHICH INCLUDES O-4, O-5, O-6, AND O-7, SHALL BE DEDICATED THROUGH A SUBDIVISION PLAT PERMIT TO THE ISSUANCE OF A BUILDING PERMIT AS REQUIRED BY THE ORDINANCE AND STANDARDS SET BY THE CITY'S SUBDIVISION ORDINANCE AND FIRE CODE PRIOR TO THE ISSUANCE OF A BUILDING PERMIT ON THE FIRST DEVELOPMENT IN PHASE II. TRACT O-7 SHALL BE DEDICATED WITHIN THE SUBMISSION OF A PLAT FOR TRACT O-2 AND TRACT O-3 SHALL BE DEDICATED WITHIN THE SUBMISSION OF A PLAT FOR TRACT O-4.



Tract	Approx. Net Acreage	Use	Max. Floor Area (sq)
PHASE ONE:			
W7896-W7998			
1-A	1.3	Mixed Use with Residential	203,581
1-B	1.05	Mixed Use with Residential	180,160
1-C	1.95	Mixed Use with Residential	306,791
2-A	3.34	Open Space - Wetland	
2-B	2.05	Open Space - Special Events	
2-C	0.33	Open Space - Rotary	
Total	9.20		789,762
PHASE TWO:			
W7999-W8004			
2-D	1.13	Mixed Use with Residential	176,360
2-E	1.10	Mixed Use with Residential	187,000
2-F	2.43	Mixed Use with Residential	315,680
2-G	1.37	Mixed Use with Residential	280,300
	6.03	Mixed Use with Wetlands/Residential	959,340

RESIDENTIAL UNITS REQUIRED TO MEET THE 1500 UNIT MINIMUM SHALL BE DEVELOPED ON THOSE SITES DESIGNATED MIXED-USE RESIDENTIAL IN PHASES 1 AND 2.

-  MIXED USE WITH RESIDENTIAL
(RESIDENTIAL WITH NON-RESIDENTIAL GROUND FLOOR USES)
-  MIXED USE WITH RESIDENTIAL
ALTERNATIVE USE; MIXED USE WITHOUT RESIDENTIAL

 PUBLIC OPEN SPACE FOR EACH PHASE TO BE DEDICATED BY PLAT PRIOR TO THE ISSUANCE OF A BUILDING PERMIT ON THE FIRST DEVELOPMENT WITHIN THAT PHASE.


$$\therefore I'' = 100'$$

originally submitted March 1, 1915. This sheet is part of a set of 6 plans showing replacing the set submitted on the same date for Lots 11, 12, and 13 of Block 4, Lots 5, 6, and 7 of Block 2, a portion of Lot 1 of Block 2, and Lot 3 and a portion of Lot 2 of Block 7, all being part of Town of Addison, and additional improved acreage of in the E. E. Fisher Success, Abstract No. 148 in the Index of Additions, Jasper County, Texas. This plan is being submitted by Bryant Hall of Columbus County, Texas; 15871 North Jordan Parkway suite 835, Austin, Texas 78740; subdivision: ME7-14800.

095-032



ADDISON

Addison Urban Center

COLUMBUS

ETKL Associates Inc.

TOWN OF ADDISON, TEXAS

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING THAT THIRD AMENDMENT TO MASTER FACILITIES AGREEMENT, RELATING TO THE FUNDING, DESIGN, AND CONSTRUCTION OF CERTAIN PUBLIC INFRASTRUCTURE WITHIN A PORTION OF THAT AREA OF THE CITY GENERALLY KNOWN AS ADDISON CIRCLE; AUTHORIZING THE CITY MANAGER TO EXECUTE THE SAID THIRD AMENDMENT ON BEHALF OF THE CITY; PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:

Section 1. The Town Council of the Town of Addison, Texas does hereby approve that Third Amendment to Master Facilities Agreement, a true and correct copy of which is attached hereto.

Section 2. The City Manager is authorized and empowered to execute the said Third Amendment to Master Facilities Agreement on behalf of the City and to take all steps necessary to carry out the terms thereof.

Section 3. This Resolution shall take effect from and after its date of adoption.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this _____ day of _____, 2003.

Mayor R. Scott Wheeler

ATTEST:

By: _____
Carmen Moran, City Secretary

APPROVED AS TO FORM:

By: _____
Ken Dippel, City Attorney

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

**THIRD AMENDMENT
TO MASTER FACILITIES AGREEMENT**

This Third Amendment to Master Facilities Agreement (the "**Amendment**") is entered into this the ____ day of _____, 2003 by and between the Town of Addison, Texas, ("**the City**"), and TEXOK Properties, LP, an Oklahoma limited partnership ("**Owner**").

Recitals:

1. Addison Circle. There is located within the Town of Addison, Texas (the "**City**") certain real property generally known as "**Addison Circle**". The development of the Addison Circle area is controlled by Ordinance No. O95-032 of the City, which Ordinance zoned the area UC Urban Center District and approved a Concept Plan (the "**Concept Plan**") for its development. The UC Urban Center District Regulations (the "UC District Regulations") are set forth in Ordinance No. O95-019 of the City, and are codified in Article XIX of Appendix A—Zoning of the City's Code of Ordinances.

2. Phased Development. As reflected in Ordinance No. O95-032 and the Concept Plan, the Addison Circle area was to be developed in three phases (Phase I, Phase II (to be developed in subphases), and Phase III) with a mixture of uses, including multi-family, residential, retail, office, and civic uses.

3. City Participation in Public Facilities in Residential Subdistrict. Included within the Addison Circle area is a residential subdistrict, as shown on the Concept Plan. To encourage the implementation of the City's comprehensive plan relating to the development of the residential subdistrict and to assure that such development was adequately supported by appropriate levels of public facilities and services, the City Council, by Resolution R95-043, approved the expenditure of public funds in the amount of \$9 million (the "**City's Funds**") to be used to pay a portion of the design and construction costs of certain public improvements within the residential subdistrict. The residential subdistrict is described in Resolution R95-043 and is referred to herein as the "**Residential Subdistrict**".

4. Master Facilities Agreement.

A. In order to establish a process for the allocation of the City's Funds, to coordinate the construction of the public and private improvements within the Residential Subdistrict, and to further the purposes of Resolution R95-043, on July 17, 1995 the City entered into a Master Facilities Agreement with the owners of all of the Residential Subdistrict, being Gaylord Properties, Inc. ("**Gaylord**") and Columbus Realty Trust ("**Columbus**"). Since the date of its execution, the Master Facilities Agreement has been amended twice, first by that "Amendment to Master Facilities Agreement" dated October 28, 1997, and second by that "Second Amendment to Master Facilities Agreement" dated December 2, 1998. The Master Facilities Agreement, as

amended, is referred to herein as the "**Master Facilities Agreement**", and is attached hereto (together with its two amendments) as **Exhibit 1**.

B. The Master Facilities Agreement, in Exhibit 4 thereto (Exhibit 4 being entitled "Addison Urban Center Cost Projections of Infrastructure Improvements" and referred to herein as "**Exhibit 4 to the Master Facilities Agreement**"), describes the nature of the **Public Infrastructure Improvements** (or "**Improvements**", as defined in the Master Facilities Agreement) covered by the Master Facilities Agreement and the maximum amounts to be paid by the City toward the design and construction of each of the Improvements.

5. Previous Expenditures of City Funds. Pursuant to the Master Facilities Agreement, the City has previously expended a portion of the City's Funds, totalling \$6,860,055.00, in connection the development of the following portions of the Residential Subdistrict:

A. Phase I of the Residential Subdistrict Property (Phase I being described in that Assignment and Construction Services Agreement dated April 12, 1996 between the City and Addison Circle One, Ltd., a Texas limited partnership), with the City spending \$4,763,507.00 out of the City's Funds in connection with the Phase I development;

B. Phase IIA of the Residential Subdistrict Property (Phase IIA being described in that Funding, Assignment and Construction Services Agreement dated September 30, 1997 between the City, Addison Circle Two, Ltd., a Texas limited partnership, Gaylord and Columbus), with the City spending \$1,671,548.00 out of the City's Funds in connection with the Phase IIA development; and

C. Phase IIB of the Residential Subdistrict Property (Phase IIB being described in that Funding, Assignment and Construction Services Agreement dated August 10, 1999 between the City, Addison Circle Three, Ltd., a Texas limited partnership, Gaylord Properties, L.P. and Post Apartment Homes, L.P., a Georgia limited partnership), with the City spending \$425,000.00 out of the City's Funds in connection with the Phase IIB development.

6. Remaining City Funds. The sum of \$6,860,055.00 of the City's Funds having been spent by the City as set forth above, there remains the sum of \$2,139,945.00 of the City's Funds (the "**Remaining City Funds**") to be spent in connection with the development of the remaining portion of the Residential Subdistrict, which remaining portion is described and depicted in **Exhibit 2** attached hereto (the "**Remaining Property**").

7. Owner As Successor In Interest. TEXOK Properties, LP, an Oklahoma limited partnership ("**Owner**") is the sole owner of the Remaining Property, and is the successor in interest by way of assignment to all of the rights, duties, and obligations of Gaylord and Columbus under the Master Facilities Agreement solely with respect to the Remaining Property. *[Add additional information regarding how Owner succeeded to the interests of Gaylord/Columbus in the Remaining Property]* Neither Owner nor Owner's successors in interest shall have any rights, duties or obligations except as relate to the Remaining Property.

8. Remaining Improvements.

A. The only Improvements identified in the Master Facilities Agreement which remain to be designed and constructed, which Improvements are to be constructed within the Remaining Property, are as follows (together, the "**Remaining Improvements**"):

1. Quorum Drive Improvements (as defined below in Section 10.C. of these Recitals, and consisting of paving, streetscape *[to be defined]*, storm sewer, and wastewater improvements for that portion of Quorum Drive as depicted and/or described on the attached **Exhibit 4**).
2. Those portions of "R" Street depicted and/or described as "C" Streets on the attached **Exhibit 3** and as further described and/or depicted on the attached Exhibit 4 (the "**R Street Improvements**").
3. Those portions of Mews Street depicted and/or described as "D" Streets on the attached Exhibit 3 and as further described and/or depicted on the attached Exhibit 4 (the "**Mews Street Improvements**").
4. That portion of Spectrum Drive as depicted and/or described on the attached Exhibit 4, in accordance with that document entitled "Construction Specifications and Contract Documents, Spectrum Drive North/South Extension, dated November 7, 2003 and prepared by Huitt-Zollars (a true and correct copy of which is on file in the office of the City's Director of Public Works), as the same may be amended or modified from time to time (the "**Spectrum Drive Improvements**").
5. Quorum North Park (0.69 acres) (as described and/or depicted on the attached Exhibit 4).
6. Mews Park (1.43 acres) (as described and/or depicted on the attached Exhibit 4).

B. Under the Master Facilities Agreement, the minimum amount of the Remaining City Funds to be expended on the design and construction of the Quorum North Park is \$290,000.00, and the minimum amount to be expended on the design and construction of the Mews Park is \$650,000.00, leaving \$1,199,945.00 of the Remaining City Funds to be spent on the street Infrastructure identified in Exhibit 4 to the Master Facilities Agreement and described above in paragraph A. of this Section.

9. Remaining Improvements Cost Differential. Under the existing terms of the Master Facilities Agreement, the City is responsible for spending the Remaining City Funds on the design and construction of the Remaining Improvements. Under the existing terms of the Master Facilities Agreement, if the actual design and construction costs for the Remaining Improvements exceed the total costs projected in Exhibit 4 to the Master Facilities Agreement, the Owner is responsible to pay the difference (the "**Remaining Improvements Cost Differential**").

10. Allocation of Construction of Improvements. In lieu of the City funding, with the Remaining City Funds, a portion of the design and construction of all of the Remaining Improvements, and the Owner funding the Remaining Improvements Cost Differential, the City and the Owner desire to modify their respective funding, design, and construction obligations set forth in the Master Facilities Agreement by allocating their respective obligations to specific

portions of the Remaining Improvements, so that each of the parties will pay in its entirety the design and construction cost of such respective portions (save and except Quorum Drive, as set forth below). The parties agree that such allocation will be as follows:

A. City will pay for, design, and construct the following (together, the "**City Remaining Improvements**") at its sole cost and expense:

1. Spectrum Drive Improvements;
2. Quorum North Park (0.69 acres) (design and construction cost to be at least \$290,00.00 but no more than \$300,000.00); and
3. Mews Park (1.43 acres) (design and construction cost to be at least \$650,000.00 but no more than \$700,000.00); and

B. Owner will pay for, design, and construct the following (together, the "**Owner Remaining Improvements**") at its sole cost and expense:

1. R Street Improvements; and
2. Mews Street Improvements.

C. Quorum Drive.

(1) Quorum Drive is an existing public street within the City, a portion of which lies within the Remaining Property as described and/or depicted on the attached Exhibit 4 (such portion is referred to herein as "**Quorum Drive**"). In connection with the development of the Remaining Property, certain improvements are to be made to both the west side and the east side of Quorum Drive to conform to the Concept Plan and any applicable development plan or ordinance, standard, rule, or regulation of the City (including, without limitation, the UC District Regulations and all appendices and exhibits thereto) (the "**Quorum Drive Improvements**"). The Quorum Drive Improvements include paving, streetscape, drainage, wastewater (sanitary sewer), and electrical improvements. The Quorum Drive Improvements to be constructed on the west side of Quorum Drive are referred to herein as the "**West Side of Quorum Improvements**", and those to be constructed on the east side of Quorum Drive are referred to herein as the "**East Side of Quorum Improvements**".

(2) In order to facilitate the design and construction of the Quorum Drive Improvements, and to assure that the development of the Remaining Property is adequately supported by appropriate levels of public facilities and services, the City desires to increase its funding of the development (ie, to increase the City Funds) by an amount equal to the cost to design and construct the West Side of Quorum Improvements, less the sum of \$184,247.00 to be paid by the Owner to the City (the "**Owner's Quorum Payment**") prior to the City's award of a contract to construct of the West Side of Quorum Improvements). The City shall, in accordance with applicable law and policy, pay for, design, and construct the West Side of Quorum Improvements at its sole cost and expense, less the Owner's Quorum Payment.

(3) Owner shall (i) pay to the City, prior to the City's award of a contract to construct the West Side of Quorum Improvements, the Owner's Quorum Payment, and (ii) pay for all East Side of Quorum Improvements, at Owner's sole cost and expense.

11. Owner Responsible For All Other Public Infrastructure Improvements. In addition to the Owner paying (i) for all costs associated with the design and construction of the Owner Remaining Improvements, (ii) the Owner's Quorum Payment, and (iii) all costs associated with the design and construction of the East Side of Quorum Improvements, Owner shall be responsible, at its sole cost and expense, to pay for the design and construction of all other public infrastructure improvements (other than the City Remaining Improvements and the West Side of Quorum Improvements (less the Owner's Quorum Payment)) necessary or required to serve the Remaining Property in accordance with all applicable laws, ordinances, standards, rules and regulations of the City (including, without limitation, the UC District Regulations and all appendices and exhibits thereto) and any other governmental entity with jurisdiction over the development of the Remaining Property.

12. Amendment to Master Facilities Agreement. By this Agreement, the City and the Owner desire to supplement and amend the Master Facilities Agreement to reflect their intent and desire regarding the funding of the design and construction of the Remaining Improvements.

NOW, THEREFORE, for and in consideration of the above and foregoing recitals and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Town of Addison, Texas and TEXOK Properties, LP, an Oklahoma limited partnership, do hereby agree as follows:

Section 1. Incorporation of Recitals. The above and foregoing recitals are true and correct and are incorporated herein and made a part hereof for all purposes.

Section 2. Remaining Improvements. The only Improvements identified in the Master Facilities Agreement which remain to be designed and constructed within the Remaining Property, are the Remaining Improvements, as described and defined in the Recitals above.

Section 3. Allocation Between the Parties of All Costs Associated With Specific Remaining Public Infrastructure Improvements. In lieu of the City funding, with the Remaining City Funds, a portion of the design and construction of all of the Remaining Improvements, and the Owner funding the Remaining Improvements Cost Differential, as described in the Recitals above, the City and the Owner desire to allocate their respective funding, design, and construction of public infrastructure obligations set forth in the Master Facilities Agreement to specific portions of the Remaining Improvements, so that each of the parties will pay in its entirety the design and construction cost for such respective portions (save and except Quorum Drive, as described herein). Such allocation shall be as follows:

A. City shall pay for all of the design and construction of (i) the City Remaining Improvements, and (ii) the West Side of Quorum Improvements, less the Owner's Quorum Payment.; and

B. Owner shall pay for all of the design and construction of (i) the Owner Remaining Improvements, (ii) the East Side of Quorum Improvements, and (iii) shall pay to the City, prior to the City's award of a contract to construct the West Side of Quorum Improvements, the Owner's Quorum Payment.

City and Owner shall pay for the entire cost of design and construction of their respective obligations hereinabove, and neither shall seek contribution from the other for their assigned obligations. Inasmuch as the City and the Owner have allocated between themselves the funding, design and construction of the Remaining Improvements, as described above, Section 6, paragraphs A., B., and C. of the Master Facilities Agreement, relating to the process and procedure for the design and management of construction of the Improvements, are not applicable to the design and construction of the Remaining Improvements.

Section 4. Schedule. Subject to the provisions of the Force Majeure clause set forth in Section 11 of the Master Facilities Agreement, the parties agree that the schedule for achieving substantial completion of construction shall be as follows: *[schedule to be agreed upon and included]*.

Section 5. Increase in Remaining City Funds. In order to facilitate the design and construction of the Quorum Drive Improvements, and to assure that the development of the Remaining Property is adequately supported by appropriate levels of public facilities and services, the City shall increase its funding of the development of the Remaining Property (ie, increase the Remaining City Funds) by an amount equal to the cost to design and construct the West Side of Quorum Improvements, less the sum of \$184,247.00 (the Owner's Quorum Payment) to be paid by the Owner to the City. Following its solicitation for bids, but prior to its award of a contract, to construct the West Side of Quorum Improvements, the City shall give Owner written notice of its intent to award such contract, and Owner shall pay to the City the Owner's Quorum Payment not later than 5:00 pm of the third day following the Owner's receipt of such notice. The City shall have no obligation to construct or to cause the construction of the West Side Quorum Improvements until such time as the City has received the Owner's Quorum Payment.

Section 6. Owner Responsible For All Other Public Infrastructure Improvements. In addition to the Owner paying (i) for all costs associated with the of the design and construction of the Owner Remaining Improvements, (ii) the Owner's Quorum Payment, and (iii) all costs associated with the design and construction of the East Side of Quorum Improvements, Owner shall, at its sole cost and expense, pay for the design and construction of all other public infrastructure improvements (other than the City Remaining Improvements and the West Side of Quorum Improvements (less the Owner's Quorum Payment)) necessary or required to serve the Remaining Property in accordance with all applicable laws, ordinances, standards, rules and regulations of the City and any other governmental entity with jurisdiction over the development of the Remaining Property. Owner shall have no obligations, rights or duties under the Master Facilities Agreement, as amended by this Amendment, except as relates to the Remaining Property as set forth and provided herein.

Section 7. Design and Construction In Accordance with City Standards. The Remaining Public Infrastructure Improvements and all other public and other improvements within the Remaining Property shall be designed and constructed in accordance with the laws, ordinances, rules, and regulations of the Town of Addison, including, without limitation, the Concept Plan and any development plan applicable to the Remaining Property.

Section 8. Assignment, Sale of East Quorum Property. It is contemplated by the parties that parcels 3-O, 3-P, O-6, 2-G and 2-F as identified on the Concept Plan for the Addison Urban Center (collectively, the "**East Quorum Property**") will be sold or otherwise transferred by Owner to a successor in interest (hereinafter referred to as "**Successor**") (the remainder of the Remaining Property being herein referred to as the "**West Quorum Property**"). City agrees that Owner may assign its rights, duties, and obligations related to the East Quorum Property under the Master Facilities Agreement and this Amendment to a Successor without further consent of the City if: (i) Successor agrees to accept in writing all of the rights, duties, and obligations of this Amendment as relate and are applicable to the East Quorum Property, and a true and correct copy of such writing is promptly provided to the City after its execution; and (ii) Successor promptly notifies the City of the identification of the Successor after such assignment and the sale or transfer of the East Quorum Property to Successor. The parties hereto agree that the only obligations related to the East Quorum Property that arise under the Master Facilities Agreement, as amended by this Amendment, are to construct, at Successor's sole cost and expense, the Owner Remaining Obligations and the East Side of Quorum Improvements.

Furthermore, the parties hereto agree that after the Successor so notifies the City of the assignment as provided in this paragraph, the Master Facilities Agreement, as to the East Quorum Property only, may not be amended without an agreement in writing between the City and Successor. The City agrees that, as to the West Quorum Property only, a default by Owner under the Master Facilities Agreement, as amended, shall not be considered or deemed to be a breach or default by Successor under this Agreement, and Successor shall be entitled to enforce the terms of the Master Facilities Agreement, as amended by this Amendment, notwithstanding such default by Owner as to the West Quorum Property.

Section 9. Owner's Representations. Owner represents and warrants to the City that Owner is the sole owner of all of the Remaining Property, is the successor in interest by way of assignment to all of the rights, duties, and obligations of Gaylord and Columbus under the Master Facilities Agreement with respect to the Remaining Property.

Section 10. Notice. All notices provided for or permitted under this Amendment shall be in writing and shall be (a) delivered personally; (b) sent by commercial overnight courier with written verification of receipt; or (d) sent by certified or registered U.S. mail, postage prepaid and return receipt requested, to the party to be notified, at the address for such party set forth below or at such other address as is indicated in writing by such party. All notices shall be deemed effective upon receipt.

To City:

5300 Belt Line Road
Dallas, Texas _____
Attn: City Manager

To Owner:

Attn: _____

Section 11. No Other Amendments. Except to the extent modified or amended herein, all other terms and obligations of the Master Facilities Agreement shall remain unchanged and in full force and effect.

Section 12. Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

Section 13. Authority to Execute. The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Amendment on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.

EXECUTED at Dallas County, Texas on the day and year first written above.

TOWN OF ADDISON, TEXAS

TEXOK PROPERTIES, LP

By: _____
Ron Whitehead, City Manager

By: Hurst Holdings, LLC, its sole
General Partner

By: _____
Stephen T. Hurst, Sole Member

ATTEST:

ATTEST:

By: _____
Carmen Moran, City Secretary

By: _____

[ACKNOWLEDGMENTS]

STATE OF TEXAS

§

COUNTY OF DALLAS

§

§

MASTER FACILITIES AGREEMENT

THIS Master Facilities Agreement (hereinafter "Agreement") is entered into this 17th day of July, 1995, by and between the TOWN OF ADDISON, TEXAS, ("the City"), a municipality organized and existing pursuant to the laws of the State of Texas and municipal charter, and GAYLORD PROPERTIES, INC., a Texas corporation ("Gaylord"), and COLUMBUS REALTY TRUST, a Texas real estate investment trust ("Columbus").

RECITALS

WHEREAS, the City is authorized pursuant to the laws of Texas and its Home Rule Charter to enter into agreements with persons or entities intending to undertake any development on real property for the purpose of providing supporting public facilities and services; and

WHEREAS, Gaylord and Columbus hold interests in certain real property located in the City, which real property is described in Section 3 of this Agreement ("the Property"); and

WHEREAS, Gaylord and Columbus desire to develop the Property with a mix of uses that contain primarily multi-family residential uses; and

WHEREAS, the City amended its Comprehensive Plan to provide for an Urban Center & Special Events District in order to reflect the mixing of residential, retail, office and civic uses within an urban framework which is small in scale and compatible with adjacent developments as an appropriate and desired land use; and

WHEREAS, the City amended the text of its Comprehensive Zoning Ordinance to provide for an Urban Center ("UC") District, by way of Ordinance No. 095-019, adopted on May 3, 1995, in order to implement the policies of the Comprehensive Plan relating to the development of the Urban Center & Special Events District; and

WHEREAS, the UC District regulations set forth standards and procedures governing the establishment of land uses within the District; and

WHEREAS, amendment of the City's Zoning Map to an UC District requires simultaneous approval or conditional approval of a Concept Plan for development of land to be included within such District; and

WHEREAS, Gaylord and Columbus requested amendment of the Zoning Map for the Property from the Commercial ("C-1") District to the UC District based on submission of a Concept Plan depicting a development project, which zoning amendment and Concept Plan were approved on July 17, 1995, by Ordinance No. 095-019; and

WHEREAS, Ord. No. 095-019 incorporates certain conditions applicable to the approved Concept Plan for development of the Property and each phase of the development project therein defined; and

WHEREAS, the Concept Plan depicts that the development of the Property will occur in three phases, with multiple subphases in each phase; and

WHEREAS, the Concept Plan represents that the development of the Property will extend over a period of up to 12 years; and

WHEREAS, the development of the Property in accordance with the Concept Plan by Gaylord and Columbus will contribute important direct and indirect economic and social benefits to the City including, but not limited to, creation of a larger, urban-oriented residential population, additional jobs and increased property and sales tax revenues; and

WHEREAS, it is essential to the City's public health, safety and general welfare to assure that the development of the Property is supported by adequate levels of public facilities and services; and

WHEREAS, the City Council by Resolution R95-043 approved expenditure of public funds in the amount of \$9 million in order to participate in the costs of public improvements to serve the development project; and

WHEREAS, a schedule of public improvements to serve each phase and subphase of the development project, together with a schedule of costs for such improvements, has been prepared; and

WHEREAS, the City has adopted by Resolution No. R95044 a professional services procurement procedure, as authorized by and consistent with Tex. Gov't. Code section 2254 et seq.; and

WHEREAS, it is necessary to provide for allocation and expenditure of said authorized funds for public improvements in order to assure that public facilities and services are timely provided to support the development of the Property; and

WHEREAS, the City Council has adopted Resolution No. R95062 on July 17, 1995, 1995, approving this Agreement with Gaylord and Columbus and authorizing the City Manager to execute same by affixing his hand and the City Seal;

NOW, THEREFORE, for and in consideration of the above and foregoing premises, and other good and valuable consideration, the CITY, GAYLORD and COLUMBUS do hereby contract and agree as follows:

Section 1. Definitions. As used in this Master Facilities Agreement, the following terms shall have the meanings indicated below:

"Affiliate" means a corporate parent of either Gaylord or Columbus owning more than 50% of the shares of Gaylord or Columbus, a partnership or joint venture in which Gaylord or Columbus own an interest of more than 50%, or a subsidiary entity of Gaylord or Columbus in which Gaylord or Columbus own an interest of more than 50%.

"Concept Plan" means the Concept Plan for the Property, together with all conditions attached thereto, as approved by the City on July 17, 1995, 1995, and incorporated into Ord. No. 095032 in accordance with the UC District regulations, and as may be amended from time to time. A true and correct copy of Ord. No. 095032 is attached hereto as Exhibit 1 and incorporated herein for all purposes.

"Development Plan" means a final development plan approved for a phase or subphase of the project in accordance with UC District Regulations.

"Phase I" and **"Phase II"** mean the plans for development of those portions of the Property identified as Phase I and Phase II, respectively, in the Concept Plan.

"Professional Services Procurement Procedure" means the City's Professional Services Procurement Procedure, a true and correct copy of which is attached hereto as Exhibit 2 and incorporated herein for all purposes.

"Public Infrastructure Improvements" or **"Improvements"** means the public streets, alleys, easements and other public rights-of-way, water, sewer and drainage facilities, park facilities and all other proposed public facilities and improvements shown and described (together with their projected design, inspection and construction costs) in the Concept Plan and in Exhibit 4 attached hereto and incorporated herein for all purposes.

"Urban Center District Regulations" means the zoning district standards and procedures established by Ordinance No. 095-019 of the City.

Section 2. Purpose and Intent. The purposes of this Agreement are to encourage implementation of comprehensive plan policies relating to development within the Urban Center and Special Events District and to assure that such development is adequately supported by appropriate levels of public facilities and services.

Section 3. Property. ~~The Property subject to this Agreement is that real property~~ described in Exhibit 3, which is attached hereto and made a part of this Agreement as if fully set forth herein, to wit, all the land lying within the Residential Subdistrict of the UC District, as described in Ord. No. 095-032 and as depicted on the Concept Plan attached thereto.

Section 4. Rights and Obligations of Parties.

A. Benefits and Burdens. The burdens of this Agreement shall bind, and the benefits of this Agreement shall inure to, the parties to this Agreement and each of them and their successors in interest.

B. Assignment.

1. Both Gaylord and Columbus shall have the right to transfer or assign their legal and equitable interest in the Property, in whole or in part, or any portion thereof, to any person, partnership, joint venture, firm or corporation at any time during the term of this Agreement; provided, however, that an assignment or delegation to an Affiliate of Gaylord or Columbus shall not require the written approval of the City, and Gaylord or Columbus shall, upon the City's request, provide the City with written evidence establishing the relationship between Gaylord or Columbus and the Affiliate. Notwithstanding the foregoing, no transfer, assignment or other conveyance by Gaylord and Columbus, or either of them, whether to an Affiliate or otherwise, shall relieve Gaylord or Columbus from its obligations pursuant to this Agreement except as authorized in writing by the City, and the obligations of Gaylord or Columbus under this Agreement may not be transferred or delegated without the written consent of the City, Gaylord and Columbus, except as provided above.

2. During the term of this Agreement, any assignee or transferee of the rights under this Agreement shall observe and perform all of the duties and obligations of Gaylord and Columbus as contained in this Agreement, or as it may be amended or revised, as such duties and obligations pertain to the portion of the Property transferred or assigned. Any transfer or assignment of this Agreement by Gaylord or Columbus shall be in writing and shall clearly provide that the assignee or transferee shall observe and perform all of the duties and obligations of Gaylord or Columbus, respectively, as contained herein.

3. Any and all successors and assignees of Gaylord or Columbus shall have all of the same rights, benefits, duties, obligations and liabilities of Gaylord or Columbus, respectively, under this Agreement.

Section 5. Public Infrastructure Improvements Schedule.

A. Schedule. Exhibit 4, which is attached hereto and which is made a part of this Agreement as if fully set forth herein, sets forth the nature of the public infrastructure improvements and their costs to be associated with each phase of the development project. The Schedule describes the estimated total costs for a particular Improvement for purposes of Section 7 of this Agreement, and further defines excess and base costs for purposes of Section 8 of this Agreement.

B. Dedication of Rights-of-Way. Dedication of all rights-of-way required for a public infrastructure improvement associated with a Phase of the development of the Property shall be made in accordance with conditions established in the Concept Plan or as required by the approved Development Plan.

Section 6. Procurement, Design and Construction Management. Procurement of services, project design and construction management for the Public Infrastructure Improvements for each phase or subphase of the development of the Property shall be in accordance with the following provisions:

A. Design.

1. Except as provided by Paragraph D of this Section 6, Gaylord and Columbus shall, in accordance with the Professional Services Procurement Procedure and the Texas Professional Services Procurement Act, prepare and solicit requests for proposals for all professional design services, including engineering, architecture and surveying, select the most highly qualified provider of services on the basis of demonstrated competence and qualifications, and then attempt to negotiate with that provider a contract at a fair and reasonable price.

2. Following selection of a professional services provider and price negotiation, Gaylord and Columbus shall submit the name and qualifications of the proposed provider of services and the negotiated price, together with all other relevant information (including the request for proposals, proposals submitted by all other providers, and the proposed contract for the professional services) to the City Council for review. The City Council shall evaluate the information submitted and vote to approve or disapprove of the proposed provider of services at the negotiated price. In the event the Council disapproves the same, Gaylord and Columbus shall continue to follow the procedure set forth in the City's Professional Services Procurement Procedure and other relevant law until the City Council approves of the provider of services and the negotiated price.

3. In preparing the request for proposals and the contract for professional services, Gaylord and Columbus shall consult with the City Engineer, City Attorney and other appropriate City Staff.

4. Following approval of a provider of professional services by the City Council, Gaylord and Columbus shall enter into a contract with the provider in accordance with the Council's approval.

5. The City shall pay Gaylord and Columbus the fees for professional services incurred by Gaylord and Columbus in the contract for professional services; provided, however, that the City shall not be obligated to pay such fees to Gaylord and Columbus until such time that: (i) the City has received from Gaylord and Columbus a detailed statement or invoice of the professional services provided, (ii) the final Development Plan for the applicable phase or subphase of the Property has been finally approved, and (iii) a building permit for the applicable phase or subphase of the Property has been issued by the City. Upon the receipt of the said invoice or statement and provided that the other conditions set forth in this Subsection 6.A.5 have been fulfilled, the City shall pay Gaylord and Columbus the amount of the invoice or statement within thirty (30) days of the receipt of the invoice or statement.

B. Construction.

1. Except as provided by Paragraph D of this Section 6, engineering, architectural, construction and other design plans and specifications for the Improvements shall be submitted to the City Engineer for review and approval. The City shall thereafter solicit bids to construct the proposed Improvements in accordance with the competitive bid process required by law. Following the opening of the bids received, the City Engineer shall notify Gaylord and

Columbus of such bids and the City Staff's proposal to the City Council regarding the award of the bid. The City Council shall thereafter award the bid.

2. In conjunction and simultaneous with the construction of the Improvements, Gaylord and Columbus will be constructing certain private improvements upon that portion of the Property included within the applicable phase or subphase. Therefore, upon the award and execution of the construction contract between the City and the contractor and in order to coordinate the construction of the public and private facilities, the City shall assign all of its rights, powers, duties and obligations under the construction contract to Gaylord and Columbus. Gaylord and Columbus shall thereafter act and serve as the owner and construction manager under such construction contract for all purposes, including inspection, material testing, staking, supervision and coordination of all construction work, in accordance with the following:

(a) Gaylord and Columbus shall use their best efforts to insure that all Improvements are completed in a timely manner in accordance with the construction contract documents, plans and specifications. Gaylord and Columbus shall thoroughly inspect the work of the contractor to guard the City against defects and deficiencies in the Improvements without assuming responsibility for the means and methods used by the contractor.

(b) Except as provided in Subparagraph (c) of this Section 6.B.2., Gaylord and Columbus shall fully and completely pay or settle, by litigation or otherwise, any claims of the construction contractor arising out of the performance of the construction contract without involving the City.

(1) Any construction contract for the construction of the Public Infrastructure Improvements shall specify that the contractor shall look solely to Gaylord and Columbus concerning any claim under the contract. In accordance therewith:

(i) For each such construction contract Gaylord and Columbus shall acquire and maintain, during any period for which a phase or subphase of the development of the Property is under construction, comprehensive general liability insurance in the amount of the construction contract or \$1,000,000, whichever is greater. Such insurance shall cover any and all claims which might arise out of the construction contract, whether by the contractor, a subcontractor, materialman or otherwise. All such insurance shall: (a) be issued by a carrier which is rated "A-1" or better by A.M. Best's Key Rating Guide and licensed to do business in the State of Texas, and (b) name the City as an additional insured. ~~Certified copies of all of such policies shall be delivered to the City upon the execution of a construction contract; provided, however, that the City, in its sole discretion and in lieu of certified copies of such policies, may permit the delivery of certificates of insurance together with the declaration page of such policies, along with the endorsement naming the City as an additional insured. Each such policy shall provide that, at least 30 days prior to the cancellation, non-renewal or modification of the same, the City shall receive written notice of such cancellation, non-renewal or modification.~~

(ii) Gaylord and Columbus shall also indemnify the City, its officers and employees against, and hold the City, its officers and employees harmless from, at Gaylord's and Columbus' cost, any and all actions, causes of action, lawsuits, judgments, claims, damages,

costs or fees, including reasonable attorney's fees (including claims for contractual damages, or claims for injury to person or property or death of any person) resulting from or based on, in whole or in part, any act or omission of Gaylord and Columbus under a construction or professional services contract entered into in the development of the Property during construction of the Improvements and until the City's Engineer accepts the Improvements as finally complete. The provisions of this Subparagraph (b)(1)(ii) shall survive the termination of this Agreement.

(c) In the event that claims from a contractor under a construction contract result from the wrongful failure by the City to make construction payments in accordance with the terms of this Agreement, Gaylord and Columbus may seek reimbursement in accordance with this Subparagraph (c). In the event Gaylord and Columbus intend to seek reimbursement from the City for the expense incurred by Gaylord and Columbus in resolving any claim caused directly by the City's wrongful failure to make such construction payments, Gaylord and Columbus shall notify the City in writing of the claim and any proposed settlement or resolution. The City reserves the right upon such notice, and at the City's sole election, to make an audit of all books, records, accounts and other data of the construction contractor relating to the claim and overall performance of the construction contract before approving payment of such claim. The construction contract shall provide for the City's right to audit such claims.

(d) Gaylord and Columbus shall review all invoices or pay estimates received from the contractor and forward the same to the City for payment with such supporting documentation as the City may require. All payments for work performed under the construction contract shall be made by the City to Gaylord and Columbus for forwarding to the construction contractor. The City shall not make a payment under any such invoice or pay estimate unless Gaylord and Columbus have provided to the City a certification regarding the invoice or pay estimate and Gaylord and Columbus have reviewed and approved the same. Gaylord's and Columbus' certification shall be by affidavit sworn to by the appropriate official of Gaylord and Columbus authorized to submit the same, and shall certify that the estimate of work completed for the relevant period is true and correct to the best of Gaylord's and Columbus' information and belief, has been measured and verified in accordance with the construction contract documents, and that all construction contract preconditions to payment have been met. Copies of all material testing results shall be furnished with the certification.

3. All change orders shall be processed and approved in accordance with the City's procedure for the review and approval thereof.

4. The construction contract shall require, among other things, that the contractor provide performance and payment bonds in a form acceptable to the City. The performance and payment bonds shall name the City and Gaylord and Columbus as joint obligees.

5. All Public Infrastructure Improvements shall become the sole property of the City upon completion of the work and acceptance of the work by the City. Upon final completion of the Improvements and acceptance thereof by the City in accordance with the construction contract for the Improvements for each phase or subphase, the City shall take the Public Infrastructure Improvements free from any liens or encumbrances thereon except for any private utility easements and any rights reserved regarding public parking.

6. In accordance with the City's Subdivision Ordinance, Ordinance No. 261, as amended, Gaylord and Columbus shall construct, place or locate all electric utility lines and wires, terminals and other facilities and equipment underground. Within the public streets and rights-of-way, to the extent that Gaylord and Columbus may be liable for the difference between the cost of constructing such electrical utility facilities overhead and placing the same underground, such cost shall be eligible for reimbursement in accordance with Section 7 of this Agreement.

C. Inspection. Notwithstanding the foregoing, the City reserves the right to inspect, test, measure or verify the construction work on the Improvements as the City deems necessary. Final payment to the construction contractor shall not be made until all Improvements have been finally completed (as verified by Gaylord and Columbus and the City) in accordance with the construction contract, plans and specifications and have been accepted by the City.

D. Park Improvements. In Phase I, the City shall contract for the design and construction of the rotary park/open space ("O-__") depicted on the Concept Plan. In Phase II, the City shall contract for the design and construction of Mildred East Park (center island) ("O-__") depicted on the Concept Plan. In the selection of a professional to design the rotary/park and Mildred East Park and the contractor to construct the same, a committee shall be formed by the City and Gaylord and Columbus to evaluate the candidates and to recommend a design professional and contractor to the City Council. The committee shall consist of seven members, four of which shall be City representatives and three of which shall be Gaylord and Columbus representatives. Each member of the committee shall be entitled to vote on the recommendation to the City Council. The City Council shall select the design professional and the construction contractor.

E. Landscape Maintenance. The City shall maintain all landscaping and streetscaping in the public right-of-way according to the specifications and standards set forth in each approved Development Plan, and as provided in the Urban Center Public Landscape Maintenance Schedule attached to this Agreement as Exhibit 7. The terms of this Subsection 6.E. shall survive the termination of this Agreement.

Section 7. Allocation of Funds, Payment and Participation by Gaylord and Columbus in Excess Costs.

~~**A. Allocation by Phase and Payment.**~~ Funds for the design and construction of the Public Infrastructure Improvements shall be allocated in the maximum amount of \$4,500,000 for Phase I and \$4,500,000 for Phase II. If the actual costs of the Public Infrastructure Improvements for either Phase I or Phase II are less than the \$4,500,000 allocated for the respective Phase, the funds remaining for that Phase shall be reallocated to pay for or to reimburse actual costs of Improvements for the other Phase. Payment shall be made by the City in accordance with the procedures set forth in Section 6 of this Agreement, not to exceed the maximum allocation per Phase except as provided herein.

B. Allocation by Subphase. If any Phase of the project is to be developed in subphases, payment by the City for any subphase shall not exceed the costs projected in the

Schedule for Public Infrastructure Improvements set forth in Exhibit 4 associated with such subphase, except by amounts by which actual costs for Public Infrastructure Improvements associated with contracts awarded for prior subphases are less than the total costs projected for such prior subphases set forth in Exhibit 4.

C. Participation in Costs by Gaylord and Columbus. In the event that actual design and construction costs for any Phase or subphase of the development of the Property (such actual costs being determined at the time of the acceptance and award by the City of a construction contract to construct the Phase or subphase Improvements, and subject to review as a result of any change order with respect to such construction contract) shall exceed the total costs projected in the Schedule for Public Infrastructure Improvements set forth in Exhibit 4, Gaylord and Columbus shall pay the City the difference between actual and projected total costs prior to the commencement of construction of the Improvements for the subphase.

D. Limitations on Payments.

1. The parties recognize that the public parks and open spaces depicted and described in the Concept Plan to be provided to the City by Gaylord and Columbus in the development of the Property must, within limits, meet a certain standard of excellence. Therefore, the parties have agreed, in improving those public parks and open spaces, on a maximum and minimum expenditure for such parks and open spaces as set forth in Exhibit 5, the Schedule for Parks and Open Space Improvements.

2. The City shall not pay for any improvements necessitated by a traffic impact analysis or facilities study required by either the Concept Plan or a Development Plan.

3. No payment for Improvements to any Phase or subphase of the development of the Property shall be made by the City until a Development Plan for the Phase or subphase has been approved and all rights-of-way for the Improvements to serve such Phase or subphase have been dedicated to the City, as required in Section 5 of this Agreement.

Section 8. Default by Gaylord and Columbus. In the event of a default by Gaylord and Columbus, the City shall have the right to terminate this Agreement by giving at least thirty days written notice of such termination to Gaylord and Columbus.

A. Events of Default. For purposes of this agreement, the following circumstances shall constitute default by Gaylord and Columbus:

1. Failure to submit a Development Plan for a Phase or subphase within Phase I or Phase II within the time specified in the Concept Plan, plus any extensions of time granted by the City pursuant to the UC District regulations.
2. Failure to be granted a certificate of occupancy for all dwelling units approved in a Development Plan or revision thereof within five (5) years following the later of such initial approval or approval of a revision.
3. Failure to meet any other time period required by the Concept Plan, any approved Development Plan, the UC District regulations, or any time

period set forth in this Agreement plus any extensions of time granted by the City.

4. Failure to provide payment to the City for the excess cost of the design and construction of the Public Infrastructure Improvements as required by Section 7.C of this Agreement.
5. Failure to dedicate to the City land and facilities for the Improvements in accordance with the schedule established in the Concept Plan or as required by the approved Development Plan.
6. Failure to satisfy any condition attached to the Concept Plan or approved Development Plan not encompassed in Subparts 1 or 3 of this Subsection 8.A.
7. A violation or breach of any provision of this Master Facilities Agreement.

B. Cure by Gaylord and Columbus . Gaylord and Columbus shall have a period of not more than ninety (90) days from the time notice of default and termination is delivered by the City within which to cure any default under Subsections 8.A.2, 4, 5, 6 or 7.

C. Reimbursement. In the event of default by Gaylord and Columbus and the termination of this Agreement by the City, Gaylord and Columbus shall reimburse the City a portion of the City's expenditure of funds for the Public Infrastructure Improvements in accordance with the following:

1. For purposes of this obligation to reimburse, the Public Infrastructure Improvements are differentiated as "base costs" and "excess costs." Generally, base costs are those costs which, in the typical development of property, might be provided by a governmental entity; excess costs are those costs which, in such a development, would be provided by a private developer. The estimated "base costs" and "excess costs" for each phase of development for the Property are identified in Exhibit 4 attached hereto and incorporated herein for all purposes.

2. Upon default, and following any period of cure provided by this Agreement, Gaylord and Columbus shall be responsible for the excess costs of Public Infrastructure Improvements in accordance with the Schedule set forth in Exhibit 4, as follows (examples of the application of the formula are contained in Exhibit 6 attached hereto and incorporated herein by reference):

a. **Phase I Excess Costs.** Gaylord and Columbus shall be responsible for the total excess costs for Phase I shown on Exhibit 4 which have been expended by the City or for which the City has become obligated under contract to the date of default, reduced by an amount calculated by multiplying such excess costs by a fraction equal to the total number of dwelling units for which a certificate of occupancy has been issued prior to default and/or the period of cure divided by 1,500 dwelling units (see Exhibit 6); provided however, that upon the issuance

of a certificate of occupancy for all of the dwelling units approved in the original or revised Development Plan for Phase I, and upon dedication of all open space land as indicated on the Concept Plan to be dedicated in conjunction with the approval of the first Development Plan in Phase II as required by the adopting Ordinance and Concept Plan (Exhibit 1), Gaylord and Columbus shall be relieved of all obligations to pay excess costs under this Subparagraph 8.C.2.a.

b. **Phase II Excess Costs.** Gaylord and Columbus shall be responsible for the cumulative excess costs for Phase II shown on Exhibit 4 which have been expended by the City or for which the City has become obligated under contract to the date of default, reduced by an amount calculated by multiplying such total cumulative excess costs by a fraction equal to the total number of dwelling units for which a certificate of occupancy has been issued for Phases I and II prior to default and/or the period of cure, divided by 1500 dwelling units (see Exhibit 6). After the time that certificates of occupancy have been issued for a total of 1000 dwelling units in Phases I and II, the obligation to pay excess costs in Phase II shall cease to be cumulative. Thereafter, in the event of default, Gaylord and Columbus shall be responsible only for the excess costs (which have been expended or for which the City has become obligated under contract for the subphase) for each subphase for which a Development Plan is approved, reduced by an amount calculated by multiplying the total excess costs which have been expended or for which the City has become obligated under contract for the subphase by a fraction equal to the total number of dwelling units for which a certificate of occupancy has been issued prior to default and/or the period of cure for such subphase, divided by the number of dwelling units approved in the Development Plan for the subphase (see Exhibit 6).

3. In the event that only part of a Public Infrastructure Improvement listed on Exhibit 4 has been constructed, excess costs for purposes of this Section 8.C will be prorated according to the percentage of completion of the Improvement.

4. Reimbursement to the City shall be provided by Gaylord and Columbus within 30 days of the issuance by the City of the notice of default and termination of this Agreement or, if Gaylord and Columbus is entitled to cure a default as provided by Section 8.B. of this Agreement but fails to do so, within 30 days following the expiration of the cure period.

5. The obligations of Gaylord and Columbus to reimburse the City pursuant to this Section 8.C. (the "Reimbursement Obligations") shall be secured by any one of the following means (the "Reimbursement Collateral"), selected by Gaylord and Columbus:

a. For Phase I, a deed of trust lien on the real property contained within Phase I for the Phase I excess costs, which shall be subordinate and inferior only to any liens for the benefit of the lender or lenders providing financing for such Phase, which deed of trust shall be in the form substantially similar to that attached hereto as Exhibit 8, or as otherwise agreed to by the City and Gaylord and Columbus;

b. For Phase II, a deed of trust lien on the real property contained within the first subphase in Phase II (which subphase shall consist of at least 200 dwelling units) for the Phase II excess costs, which shall be subordinate and inferior only to any liens for the benefit of the lender or lenders providing financing for such subphase, which deed of

trust shall be in the form substantially similar to that attached hereto as Exhibit 8, or as otherwise agreed to by the City and Gaylord and Columbus;

c. An irrevocable letter of credit for the benefit of the City by Bank One, Texas, National Association, or another bank reasonably acceptable to the City, in the maximum amount specified below, which may be drawn upon by the City in the event Gaylord and Columbus shall default in payment of the Reimbursement Obligations; or

d. A lien on other collateral reasonably acceptable to the City.

The maximum amount secured by any lien or the amount of any letter of credit given to secure the Phase I Excess Costs (as defined in Subsection 2.a. above) or the Phase II Excess Costs (as defined in Subsection 2.b. above) shall be the maximum unpaid amount of such costs from time to time outstanding computed pursuant to the terms of this Agreement. The Reimbursement Collateral for the Phase I Excess Costs shall be delivered at the time of the first disbursement of funds by the City to pay the cost of Improvements in Phase I. The Reimbursement Collateral for the Phase I Excess Costs shall be released (or in the case of a letter of credit returned to Gaylord and Columbus) upon the earlier to occur of (i) satisfaction of the obligations of Gaylord and Columbus pursuant to Subsection 2.a. above, or (ii) the failure or refusal of the City to fund its obligation to pay for the cost of the Improvements for Phase I, except as a result of a default by Gaylord and Columbus pursuant to the Agreement. The Reimbursement Collateral for the Phase II Excess Costs shall be delivered at the time of the first disbursement of funds by the City to pay the cost of Improvements in Phase II. The Reimbursement Collateral for the Phase II Excess Costs shall be released (or in the case of a letter of credit returned to Gaylord and Columbus) upon the earlier to occur of (i) satisfaction of the obligations of Gaylord and Columbus pursuant to Subsection 2.b. above, or (ii) the failure or refusal of the City to fund its obligation to pay for the cost of the Improvements for Phase II, except as a result of a default by Gaylord and Columbus pursuant to the Agreement. Gaylord and Columbus shall have the right at any time to substitute one form of the Reimbursement Collateral for another or to substitute one letter of credit for another upon written notice to the City.

D. Remedies for Failure to Pay Reimbursement. In the event Gaylord and Columbus fail to reimburse the City in accordance with the terms of this Agreement, the City shall be entitled to exercise any of the following remedies:

1. ~~The City shall have the right to foreclose the deed of trust lien or lien on other collateral, or draw upon the irrevocable letter of credit, as described in Subsection 8.C.5. above.~~

2. The City shall have the right to pursue any and all other legal or equitable remedies available to the City, including but not limited to the right to recover damages for breach of contract.

Section 9. Representations by Gaylord and Columbus. Gaylord and Columbus hereby represent and warrant that Gaylord and Columbus have, without the joinder of any other person or entity, the full right, power and authority to execute this Contract and to carry out the obligations of Gaylord and Columbus hereunder.

Section 10. Term. The term of this Agreement shall begin on the date first set forth above and, unless otherwise terminated in accordance with the provisions of this Agreement, shall end on the later of: (a) the date on which the total certificates of occupancy issued for dwelling units for Phase I and Phase II equal 1,500, or (b) the date on which the City shall have expended all of the funds for which it is obligated hereunder for the design, inspection, review and construction of the Public Infrastructure Improvements.

Section 11. Force Majeure. It is expressly understood and agreed by the parties to this Agreement that if the substantial completion of the construction of any private improvements or any Public Infrastructure Improvements is delayed by reason of war; civil commotion; acts of God; inclement weather; governmental restrictions, regulations, or interferences directly related to the construction of the private improvements or the Public Infrastructure Improvements and not related or connected to the financing or funding of the development of the Property or any other financial aspect of such development; delays caused by the franchise utilities serving the Property; fire or other casualty; condemnation proceedings; or any like or similar circumstances which are reasonably beyond the control of the party obligated or permitted under the terms of this Agreement to do or perform the same, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such performance shall be extended for a period of time equal to the period such party was delayed.

Section 12. Texas Law to Apply; Venue. The validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the parties hereto, shall be governed by the laws of the State of Texas. Venue under this Agreement lies in Dallas County, Texas.

Section 13. Entire Agreement. This Agreement represents the entire and integrated agreement between the City and Gaylord and Columbus and supersedes all prior negotiations, representations and/or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the City and Gaylord and Columbus.

Section 14. Severability. If any clause, paragraph, section or portion of this Agreement shall be found to be illegal, unlawful, unconstitutional or void for any reason, the balance of the Agreement shall remain in full force and effect and the parties shall be deemed to have contracted as if said clause, section, paragraph or portion had not been in the Agreement initially.

Section 15. Notices. Where the terms of this Agreement require that notice in writing be provided, such notice shall be deemed delivered three (3) days following the deposit of the notice in the United States mail, postage prepaid, and sent by certified mail, return receipt requested and properly addressed as follows:

TO TOWN OF ADDISON:

P.O. Box 144
Addison, Texas 75001

Attn: City Manager

TO GAYLORD PROPERTIES, INC.:

10111 GPI
~~1011~~ N. Central Expressway
Dallas, Texas 75231

Attn: Glenn Stinchcomb

TO COLUMBUS REALTY TRUST:

15851 Dallas Parkway
Suite 855
Dallas, Texas 75248

Attn: Bryant Nail

Section 16. Incorporation of Recitals. The recitals set forth herein are intended, and are hereby deemed, to be a part of this Agreement.


Section 17. Recording. This Master Facilities Agreement shall not be recorded except with the express written consent of the City, Gaylord and Columbus.

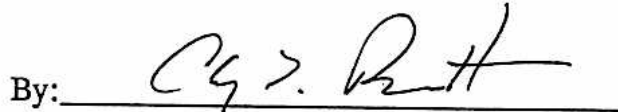
Section 18. Incorporation of Exhibits. Exhibits 1 - 8 attached hereto are hereby incorporated in this Agreement in full by this reference and are deemed to be a part of this Agreement as fully as if set forth in the body hereof.

EXECUTED at Dallas County, Texas on the day and year first written above.

TOWN OF ADDISON, TEXAS

GAYLORD PROPERTIES, INC.


By: 
Ron Whitehead, City Manager

By: 

ATTEST:

COLUMBUS REALTY TRUST

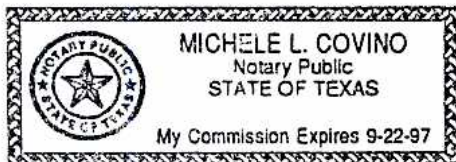
By: 
Carmen Moran, City Secretary

By: 

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
 COUNTY OF DALLAS §

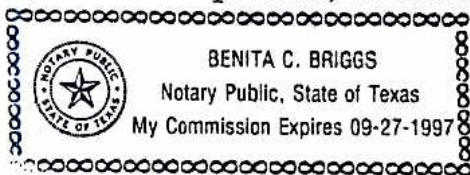
This instrument was acknowledged before me on SEPTEMBER 29, 1995 by Ron Whitehead, City Manager of the Town of Addison, Texas, a Texas municipal corporation, on behalf of the said municipal corporation.



Michele L. Covino
 NOTARY PUBLIC, State of Texas

STATE OF TEXAS §
 §
 COUNTY OF DALLAS §

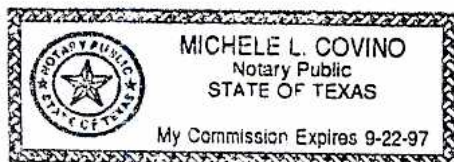
This instrument was acknowledged before me on September 21, 1995 by Clayton J. Bennett, Vice President of Gaylord Properties, Inc., a Texas corporation, on behalf of the said corporation.



Benita C. Briggs
 NOTARY PUBLIC, State of Texas

STATE OF TEXAS §
 §
 COUNTY OF DALLAS §

This instrument was acknowledged before me on SEPTEMBER 29, 1995 by BRYANT NAIL, VICE PRESIDENT DEL. of Columbus Realty Trust, a Texas real estate investment trust, on behalf of the said real estate investment trust.



Michele L. Covino
 NOTARY PUBLIC, State of Texas

CHAPTER XX
PROCUREMENT OF PROFESSIONAL SERVICES

SECTION 1. DEFINITION OF PROFESSIONAL SERVICES

Professional Services are those services performed by an individual or group of individuals where education, degrees, certification, license and/or registration is required for qualification to perform the service. The service is usually based on intellectual qualification as opposed to craftsmanship.

Certain Professions are specifically named in the Professional Services Procurement Act (Article 664-4. Vernon's Texas Civil Statutes).

SECTION 2. PROFESSIONAL SERVICES PROCUREMENT ACT (VTCS Article 664-4)

- A. This act states that contracts for the procurement of defined professional services may not be awarded on the basis of bids. Instead, they must be awarded on the basis of demonstrated competence and qualifications, so long as the professional fees are consistent with, and not higher than the published recommended practices and fees of the various professional associations and do not exceed any maximums provided by state law.
- B. Professional services are defined as those performed by a certified public accountant, licensed architect, physician, optometrist, surgeon, registered surveyor, engineer or any group or association thereof.

SECTION 3. PROCUREMENT OF ARCHITECTURAL - ENGINEERING SERVICES (VTCS Article 644-4)

- A. When procuring architectural or engineering services, the entity shall use a two-step selection process. First, the entity shall select an individual or firm capable of performing the service, on the basis of demonstrated competence and qualifications. The entity shall then enter into negotiations on a contract at a fair and reasonable price.
- B. If the entity is unable to negotiate a satisfactory contract with the most highly qualified individual or firm, it shall formally end negotiations with that person or firm, and then proceed to the next most highly qualified and repeat the process. Negotiations are carried on in this sequence until a contract is made.
- C. If any agreement or contract is entered into with one of the above mentioned professionals on the basis of a competitive bid, it is contrary to public policy and is void.

SECTION 4. PROCUREMENT OF ARCHITECTURAL OR ENGINEERING SERVICES - FEES
ESTIMATED TO BE UNDER \$15,000 PER YEAR.

The Town's staff shall solicit proposals from qualified professionals and the director of the using department will select an individual or firm capable of performing the service, on the basis of demonstrated competence and qualifications. The department director will enter negotiations with the selected individual or firm and follow the procedures established by the ACT, above.

SECTION 5. PROCUREMENT OF ARCHITECTURAL OR ENGINEERING SERVICES - FEES
ESTIMATED TO BE \$15,000, OR MORE, PER YEAR.

- A. An advertisement shall be placed with a newspaper, normally used for legal advertising,

CHAPTER XX

PROCUREMENT OF PROFESSIONAL SERVICES (cont'd)

soliciting Statements of Qualifications from all qualified professionals interested in providing the needed services. The advertisement shall be run in one edition of the selected newspaper, at least one week prior to the date Statements of Qualifications are due.

- B. The Request for Qualifications (RFQ) shall contain sufficient information to inform potential architects and/or engineers as to the type of project, scope of services to be performed, and the selection criteria to be used. The RFQ will give the relative importance, or weighting, assigned to each of the criteria to be used in the selection process. The following criteria shall be used, but the RFQ is not necessarily limited to these criteria:
1. The firm's experience in successfully performing similar assignments, scope and size, for others.
 2. The firm's current staff, both size and related experience, is qualified to provide the desired services.
 3. Sufficient finances and other resources are available to accomplish the assignment, within the time to be allowed by the Town, and the firm will be able to provide continuing service.
 4. Previous clients, for similar projects, express satisfaction with the firm's work.
 5. The firm's response, as perceived by the Town's staff, is complete and of acceptable quality.
- C. An engineer or architect may be selected after the evaluation of Statements of Qualifications or it may be necessary to interview several of the firm's and further evaluate them on the basis of the interview or a presentation, narrowing the field until one firm is selected for negotiations.
- D. When negotiations are successfully concluded, a recommendation will be made to the City Council that a contract be awarded to the chosen firm. A tabulation showing all of the firms submitting Statements of Qualifications and each firm's score, by criterion, will be attached to the recommendation.

SECTION 6. PROCUREMENT OF PERSONAL AND PROFESSIONAL SERVICES, OTHER THAN THOSE EXEMPTED FROM COMPETITIVE PRICING

- A. Professional services, other than those named in the ACT, may be contracted through the use of Request for Proposals (RFP) and selection should be made on the basis of criteria similar to those for Engineers and Architects; however, cost should be an additional criteria, in addition to those criteria used for Engineers and Architects.
- B. Services with fees under \$15,000 per year may be solicited, evaluated, and awarded by the Town's staff and the using department's director, similar to the selection process for Engineers and Architects.

CHAPTER XX

PROCUREMENT OF PROFESSIONAL SERVICES (cont'd)

- C. Services with fees of \$15,000 or more shall be advertised in two editions of the newspaper, one week apart, the last advertisement to run at least one week prior to the due date for RFP's.

The selection process will be similar to that used for Engineers and Architects, and after negotiations are successfully concluded the City Council shall be asked to award a contract.

- D. Below are some of the services held to be professional services in Texas cases or Attorney General Opinions, according to the LBJ School of Public Affairs, Advance Public Purchasing course:

Abstracters, Appraisers, Artists, Attorneys, Auditors, Construction Manager Consultants, Coordinators of Criminal Investigation, Financial Services Advisors, Fiscal Agents, Law Enforcement Consultants, Map Makers, Models, Plat Book Preparers, Private Consultants, Property Tax Consultants, Scientists, Supervisors of Public Construction Projects, Teachers, and Third Party Administrators.

LAND DESCRIPTION
TRACT 1

BEING a tract of land situated in the G. W. Fisher Survey, Abstract No. 482, in the City of Addison, Dallas County, Texas, and being all of Lots 11, 12, and 13, of Block B, and Lots 5, 6, of 7 of Block D, and a portion of Lot 8 of Block D, in Julian's Addition, an addition to the City of Addison, as recorded in Volume 1, Page 538 of the Map Records of Dallas County, Texas, also being a portion of Clara Street as abandoned by the Town of Addison as evidenced by instrument recorded in Volume 91118, Page 1571 of the Deed Records of Dallas County, Texas, and being part of a tract of land standing in the name of Opubco Properties, Inc. as evidenced by instrument recorded in Volume 84151, Page 3619 of the Deed Records of Dallas County, Texas and being more particularly described as follows:

BEGINNING at a 1/2 inch iron rod found at the intersection of the north right-of-way line of the St. Louis and Southwestern Railroad, a 100 foot wide right-of-way, with the east line of a 20 foot alley in Block B of said addition;

THENCE North 00 degrees 01 minute 39 seconds East along the east line of said 20 foot alley a distance of 739.37 feet to a 1/2 inch iron rod set with "Huitt-Zollars" cap in the south right-of-way line of Mildred Street as established by instrument to the Town of Addison, Texas as recorded in Volume 91118, Page 1567 of the Deed Records of Dallas County, Texas;

THENCE South 89 degrees 49 minutes 12 seconds East along the south right-of-way line of Mildred Street a distance of 209.14 feet to a 1/2 inch iron rod set with "Huitt-Zollars" cap at the beginning of a curve to the right having a radius of 776.03 feet;

THENCE continuing along said south right-of-way line and along said curve to the right through a central angle of 07 degrees 00 minutes 45 seconds, an arc distance of 94.98 feet, being subtended by a chord which bears South 86 degrees 18 minutes 50 seconds East, and is 94.92 feet in length to a 1/2 inch iron rod set with "Huitt-Zollars" cap;

THENCE South 82 degrees 48 minutes 27 seconds East continuing along said south right-of-way line a distance of 155.79 feet to a 1/2 inch iron rod set with "Huitt-Zollars" cap in the west right-of-way line of Quorum Drive as established by instrument to the Town of Addison, Texas as recorded in Volume 82093, Page 1073 of the Deed Records of Dallas County, Texas;

THENCE South 07 degrees 00 minutes 23 seconds West along the said west right-of-way line of Quorum Drive a distance of 226.99 feet to a 1/2 inch iron rod set with "Huitt-Zollars" cap at the beginning of a curve to the left having a radius of 1472.39 feet;

THENCE continuing along said west right-of-way line and along said curve to the left through a central angle of 06 degrees 52 minutes 23 seconds, an arc distance of 176.62 feet, being subtended by a chord which bears South 03 degrees 34 minutes 11 seconds West, and is 176.52 feet in length to a 1/2 inch iron rod set with "Huitt-Zollars" cap;

THENCE South 00 degrees 08 minutes 00 seconds West continuing along said west right-of-way line a distance of 131.28 feet to a 1/2 inch iron rod found in the north right-of-way line of said St. Louis and Southwestern Railroad;

THENCE South 66 degrees 45 minutes 00 seconds West along north right-of-way line of said St. Louis and Southwestern Railroad a distance of 456.90 feet to the POINT OF BEGINNING and CONTAINING 6.358 acres of land more or less.

STP/MSH/11/2011/10/12/14

LAND DESCRIPTION
TRACT 2

BEING a tract of land situated in the G. W. Fisher Survey, Abstract No. 432, in the City of Addison, Dallas County, Texas, and being all of Lot 3 of Block F, and a portion of Lot 2 of Block F, in Julian's Addition, an addition to the City of Addison, as recorded in Volume 1, Page 538 of the Map Records of Dallas County, Texas, and being part of three tracts of land standing in the name of Opubco Properties, Inc. as evidenced by instruments recorded in Volume 84151, Page 3619, Volume 82020, Page 0684, and Volume 82020, Page 0688 all of the Deed Records of Dallas County, Texas and being more particularly described as follows:

BEGINNING at a 1/2 inch iron rod set with "Huitt-Zollars" cap at the intersection of the east line of a 20 foot alley in Block F of said addition with the north right-of-way line of Mildred Street as established by instrument to the Town of Addison, Texas as recorded in Volume 91118, Page 1567 of the Deed Records of Dallas County, Texas, said point also being in a platted east line of Addison Conference Center - Addison Centre Theater plat as recorded in Volume 90241, Page 2807 of the Deed Records of Dallas County, Texas;

THENCE North 00 degrees 01 minute 39 seconds East along the east line of said 20 foot alley and the east line of said Addison Conference Center plat a distance of 183.48 feet to a one-inch iron rod found at the most southerly northeast corner of said Addison Conference Center plat;

THENCE South 89 degrees 57 minutes 01 seconds West along a north line of said Addison Conference Center plat a distance of 80.89 feet to a 1/2 inch iron rod set with "Huitt-Zollars" cap;

THENCE North 00 degrees 06 minutes 05 seconds West along an east line of said plat a distance of 202.59 feet to a 1/2 inch iron rod set with "Huitt-Zollars" cap at the most northerly northeast corner said plat;

THENCE South 89 degrees 53 minutes 55 seconds West along the north line of said plat a distance of 284.57 feet to a 1/2 inch iron rod set with "Huitt-Zollars" cap in the west line of said Opubco Properties, Inc. as recorded in Volume 82020, Page 0688;

THENCE North 00 degrees 12 minutes 25 seconds East along the west line of said Opubco tract a distance of 850.70 feet to a P.K. nail set in concrete base of fence post at the northwest corner of said Opubco tract;

THENCE South 89 degrees 05 minutes 45 seconds East along the last mentioned Opubco tract and the north line of said Opubco tract as recorded in Volume 82020, Page 0684 a distance of 860.14 feet to a 1/2 inch iron rod set with "Huitt-Zollars" cap in the west right-of-way line of Quorum Drive as established by instrument to the Town of Addison, Texas as recorded in Volume 82093, Page 1073 of the Deed Records of Dallas County, Texas;

THENCE South 00 minutes 55 seconds 13 seconds West along the west right-of-way line of Quorum Drive a distance of 1089.96 feet to a 1/2 inch iron rod set with "Huitt-Zollars" cap at the beginning of a curve to the right having a radius of 1392.39 feet;

THENCE continuing along said west right-of-way line and along said curve to the right through a central angle of 06 degrees 05 minutes 10 seconds, an arc distance of 147.90 feet, being subtended by a chord which bears South 03 degrees 57 minutes 48 seconds West, and is 147.83 feet in length to a 1/2 inch iron rod set with "Huitt-Zollars" cap;

THENCE South 07 degrees 00 minutes 23 seconds West continuing along the west right-of-way line of Quorum Drive a distance of 12.27 feet to a 1/2 inch iron rod set with "Huitt-Zollars" cap in the said north right-of-way line of Mildred Street;

Master Facilities Agreement With Amendments – EXHIBIT 1

THENCE North 82 degrees 48 minutes 27 seconds West along the North right-of-way line of Mildred Street a distance of 155.53 feet to a 1/2 inch iron rod set with "Huitt-Zollars" cap at the beginning of a curve to the left having a radius of 856.03 feet;

THENCE continuing along said north right-of-way line and along said curve to the left through a central angle of 07 degrees 00 minutes 45 seconds, an arc distance of 104.77 feet, being subtended by a chord which bears North 86 degrees 18 minutes 50 seconds West, and is 104.71 feet in length to a 1/2 inch iron rod set with "Huitt-Zollars" cap;

THENCE North 89 degree 49 minutes 12 seconds West continuing along the north right-of-way line of Mildred Street a distance of 209.35 feet to the POINT OF BEGINNING and CONTAINING 21.255 acres of land more or less.

LAND DESCRIPTION
TRACT 3

BEING a tract of land situated in the G. W. Fisher Survey, Abstract No. 482, in the City of Addison, Dallas County, Texas, and being part of two tracts of land standing in the name of Opubco Properties, Inc. as evidenced by instruments recorded in Volume 84151, Page 3619, and Volume 82020, Page 0684 all of the Deed Records of Dallas County, Texas and being more particularly described as follows:

BEGINNING at a 1/2 inch iron rod set with "Huitt-Zollars" cap at the intersection of the north right-of-way line of the St. Louis and Southwestern Railroad, a 100 foot wide right-of-way, with east right-of-way line of Quorum Drive as established by instrument to the Town of Addison, Texas as recorded in Volume 82093, Page 1077 of the Deed Records of Dallas County, Texas;

THENCE North 00 minutes 08 seconds 00 seconds East along the east right-of-way line of Quorum Drive a distance of 96.69 feet to a 1/2 inch iron rod set with "Huitt-Zollars" cap at the beginning of a curve to the right having a radius of 1392.39 feet;

THENCE continuing along said east right-of-way line of Quorum Drive and along said curve to the right through a central angle of 06 degrees 52 minutes 23 seconds, an arc distance of 167.03 feet, being subtended by a chord which bears North 03 degrees 34 minutes 12 seconds East, and is 166.93 feet in length to a 1/2 inch iron rod set with "Huitt-Zollars" cap;

THENCE North 07 degrees 00 minutes 23 seconds East continuing along the east right-of-way line of Quorum Drive a distance of 319.26 to a 1/2 inch iron rod set with "Huitt-Zollars" cap at the beginning of a curve to the left having a radius of 1472.39 feet;

THENCE continuing along said east right-of-way line of Quorum Drive and along said curve to the left through a central angle of 06 degrees 05 minutes 10 seconds, an arc distance of 156.40 feet, being subtended by a chord which bears North 03 degrees 57 minutes 48 seconds East, and is 156.33 feet in length to a 1/2 inch iron rod set with "Huitt-Zollars" cap;

THENCE North 00 degrees 55 minutes 13 seconds East continuing along the east right-of-way line of Quorum Drive a distance of 1089.99 feet to a 1/2 inch iron rod set with "Huitt-Zollars" cap in the north line of said Opubco tract as recorded in Volume 82020, Page 0684;

THENCE South 89 degrees 05 minutes 45 seconds East along the north line of said Opubco tract a distance of 543.53 feet to a 18" hackberry tree, from which a 1/2 inch iron rod set with "random" cap bears North 89 degrees 05 minutes 45 seconds West a distance of 2.00 feet;

THENCE South 00 degrees 55 minutes 13 seconds West a distance of 1561.42 feet to a 1/2 inch iron rod set with "Huitt-Zollars" cap in the north right-of-way line of said St. Louis and Southwestern Railroad to a point for a corner;

THENCE South 66 degrees 45 minutes 00 seconds West along the north line of said St. Louis and Southwestern Railroad a distance of 648.95 feet to the POINT OF BEGINNING and CONTAINING 21.477 acres of land more or less.

ADDISON URBAN CENTER
COST PROJECTIONS OF
INFRASTRUCTURE IMPROVEMENTS

06/22/95

PHASE I

ITEM	BASE COST	EXCESS COST	TOTAL COST
Quorum Drive (1650 L.F.)	\$464,000	\$464,000	\$928,000
Mildred West of Quorum (3611 L.F.)	\$140,000	\$140,000	\$280,000
Quorum Rotary Open Space (0.58 Ac)	\$468,000	\$468,000	\$936,000
Mosque Park (0.96 Ac)	\$0	\$535,000	\$535,000
Street R - 3 (425 L.F.)	\$0	\$445,000	\$445,000
Street R - 4 (575 L.F.)	\$0	\$596,000	\$596,000
Street M - 1 (680 L.F.)	\$0	\$780,000	\$780,000
TOTALS	\$1,072,000	\$3,428,000	\$4,500,000

Master Facilities Agreement With Amendments – EXHIBIT 1

ITEM	PHASE II		
	BASE COST	EXCESS COST	TOTAL COST
Quorum Drive (2075 L.F.) (1/2 of street)	\$260,000	\$260,000	\$520,000
Mildred East of Quorum (419 L.F.) West of Spectrum)	\$159,000	\$159,000	\$318,000
Spectrum (1275L.F.)	\$182,000	\$182,000	\$364,000
East Mildred Open Space (1.13 Ac)	\$305,000	\$305,000	\$610,000
Quorum North Park (0.69 Ac)	\$0	\$295,000	\$295,000
Mews Park (1.43 Ac)	\$0	\$675,000	\$675,000
R - 2 (525 L.F.)	\$0	\$270,000	\$270,000
R - 3 (400 L.F.)	\$0	\$205,000	\$205,000
R - 4 (630 L.F.)	\$0	\$322,000	\$322,000
R - 5 (325 L.F.)	\$0	\$166,000	\$166,000
M - 2 (1275 L.F.)	\$0	\$624,000	\$624,000
Mildred east of Spectrum (590 L.F.)	\$0	\$131,000	\$131,000
TOTALS	\$906,000	\$3,594,000	\$4,500,000

Note: The above cost projections include costs for private utilities, engineering, special plan review, independent inspection and construction costs associated with Phases I and II of the Urban Center.

06/22/95

SCHEDULE FOR PARKS AND
OPEN SPACE IMPROVEMENTS
ADDISON URBAN DISTRICT
JUNE 21, 1995

		MINIMUM ALLOWANCE	MAXIMUM ALLOWANCE
1.)	Quorum Rotary (0.58 Ac)	870,000	1,000,000
2.)	Bosque Park (0.96 Ac)	500,000	570,000
SUBTOTAL PHASE I		1,370,000	1,570,000
3.)	Quorum North Park (0.69 Ac)	290,000	300,000
4.)	East Mildred Open Space (1.13 Ac)	580,000	640,000
5.)	Mews Park (1.43 Ac)	650,000	700,000
SUBTOTAL PHASE II		1,520,000	1,640,000
TOTAL		2,890,000	3,210,000

Estimates include all costs associated with bid document preparation, construction, inspection, utility service, etc. necessary to complete the parks.

Example 1. Default during Phase I.

Council approves Development Plan for 500 dwelling units; Gaylord and Columbus default after certificates of occupancy have been issued for 250 units.

Excess costs = \$3.428 million.

Gaylord and Columbus liability = \$3.428 million, reduced by $250/1,500 \times \$3.428$ million (12.5% reduction), = \$2.999 million.

Example 2. Default during Phase II (less than 1,000 dwelling units have received certificate of occupancy approval).

Gaylord and Columbus constructs 500 dwelling units in phase I, defaults after certificates of occupancy have been issued for 400 dwelling units in Phase II.

Cumulative excess costs for Phase II = \$1 million

Gaylord and Columbus liability = \$1 million, reduced by $(500 + 400)/1,500 \times \1 million (60% reduction), = \$400,000.

Example 3. Default during Phase II (at least 1,000 dwelling units have received certificate of occupancy approval).

Gaylord and Columbus constructs 1000 dwelling units in Phases I and II, defaults after certificates of occupancy have been issued for 100 of 200 dwelling units approved in the Development Plan for the next sub-phase of Phase II.

Excess costs for the sub-phase = \$500,000.

Gaylord and Columbus liability = \$500,000, reduced by $100/200 \times \$500,000$ (50% reduction) = \$250,000.

Example 1. Default during Phase I.

Council approves Development Plan for 500 dwelling units; Gaylord and Columbus default after certificates of occupancy have been issued for 250 units.

Excess costs = \$3.428 million.

Gaylord and Columbus liability = \$3.428 million, reduced by $250/1,500 \times \$3.428$ million (16.6% reduction), = \$2.8566 million.

Example 2. Default during Phase II (less than 1,000 dwelling units have received certificate of occupancy approval).

Gaylord and Columbus construct 500 dwelling units in phase I, defaults after certificates of occupancy have been issued for 400 dwelling units in Phase II.

Cumulative excess costs for Phase II = \$1 million

Gaylord and Columbus liability = \$1 million, reduced by $(500 + 400)/1,500 \times \1 million (60% reduction), = \$400,000.

Example 3. Default during Phase II (at least 1,000 dwelling units have received certificate of occupancy approval).

Gaylord and Columbus construct 1000 dwelling units in Phases I and II, defaults after certificates of occupancy have been issued for 100 of 200 dwelling units approved in the Development Plan for the next subphase of Phase II.

Excess costs for the subphase = \$500,000.

Gaylord and Columbus liability = \$500,000, reduced by $100/200 \times \$500,000$ (50% reduction) = \$250,000.

URBAN CENTER - PUBLIC LANDSCAPE MAINTENANCE SCHEDULE

LANDSCAPE MAINTENANCE

The following minimum standards of landscape maintenance shall be employed:

PART 1 - GENERAL

1.1 SCOPE:

- A. Complete exterior landscape maintenance as specified and shown on all development plans for the Urban Center District.
- B. Keep all landscaped areas in a healthy and neat condition. Refer to Part 4 Schedules herein.
- C. Include watering, fertilization, pruning, spraying, overseeding, weeding, herbicide applications, bed cultivation, edging, and litter removal in landscape areas.
- D. Coordinate maintenance schedule to assure a minimum amount of inconvenience to facility operators.

1.2 DAMAGE:

City is responsible for repairing any damage that results from the maintenance operation.

PART 2 - PRODUCTS

2.1 COMMERCIAL FERTILIZER:

- A. Shade Trees, Groundcovers, and Non-Flowering Shrubs: 15-5-10 element percentage (3 1/2 ratio) with a minimum 8% sulphur and 4% iron plus trace elements. Nitrogen source to be at least 50% slow release Ureaformaldehyde (UF) or Sulfur Coated Area (SCU).
- B. Flowering Trees, Flowering Shrubs, Perennials, and Annuals: 10-20-10 element percentage (1-2-1 ratio) with trace elements plus minimum 8% sulfur and 4% iron.
- C. Azaleas: Car Pool Acid Azalea and Camellia fertilizer, 5-20-3 analysis plus trace elements.

①

2.2 HERBICIDES:

A. Shrub and Groundcover Beds:

1. Pre-emergent: Dacthal granules.

2.3 PESTICIDES:

A. Spray as required for safe control of the particular insect or disease that may infest the plantings.

B. Complete sprayings with a licensed applicator.

2.4 BED MULCH:

A. Shredded Pine Bark mini-nuggets to match existing.

PART 3 - EXECUTION

3.1 WATERING:

A. Check operation of the automatic irrigation system and adjust timing as required.

B. Take into consideration specific site conditions and compensate system's timing for areas in shade, sloping areas, and weather conditions.

C. Program the controller so plant and lawn areas receive an inch to an inch and one-half of water per week. Refer to manufacturer for precipitation rates of the sprinkler heads.

D. Visually check the system weekly during the summer months and monthly December through March.

E. Promptly repair any damages to system and remedy operation problems.

3.2 FERTILIZING:

A. General: Refer to Part Schedules for fertilizer application intervals. Water thoroughly after each application.

B. Shade Trees: Fertilize annually at the rate of 1.5 lb. per inch of tree caliper by uniformly broadcasting fertilizer around the drip line of the tree. Use 3 1/2 ratio.

- C. Spring Flowering Trees, Shrubs, Annuals and Perennials. In beds, uniformly spread fertilizer at the rate of 3 lbs. per 100 sq. ft. For trees, broadcast around the drip line at the rate of 1 lb. per inch of tree caliper.

3.3 PRUNING:

- A. Trees: Complete this work with experienced tree pruning personnel only. In general, thin out and remove any dead wood and shape to maintain symmetry. DO NOT SHEAR OR TOP TREES.
- B. Spring Flowering Trees and Shrubs: Complete pruning as noted above after blooming period.
- C. Evergreen Shrubs: Prune selectively as their growth warrants to remain in bounds and to eventually form a solid mass. Remove any dead woods as needed. DO NOT SHEAR.
- D. Groundcover: During growing season, shear to remain in bounds. Complete major pruning in early spring. Shear Liriope and Asian Jasmine to a height of 6; in early spring.
- E. Perennials: Cut off and dispose of dead top growth after first frost. Remove blooms as they fade throughout the season.

3.4 PEST CONTROL:

- A. Provide complete pesticide control as the need may occur. Carefully inspect lawn and plantings weekly and complete any needed control in a timely manner.
- B. Carefully follow label instructions and complete spraying with licensed personnel only.

3.5 WEED CONTROL:

- A. Apply herbicides by a licensed operator as outlined in Part 4, Schedules. Carefully follow label instructions. Replace any damaged plant materials at no cost to the Owner.

3.6 WEEDING/CULTIVATING:

- A. Remove weeds and foreign grasses from bed areas weekly. Lightly cultivate beds once every two weeks during growing season.

Discontinue groundcover bed cultivation once groundcovers/shrubs have covered.

3.7 CLEAN UP/LITTER REMOVAL:

- A. Clean up and haul off all debris resulting from the maintenance operation plus any debris which may have accumulated in the plant beds.

3.8 BED MULCH:

- A. Add mulch material to shrub and groundcover beds as needed to maintain two inch layer of mulch over the planting area.
- B. Discontinue mulching when plants cover ground surfaces.

3.9 ANNUAL FLOWERS:

- A. Plant annuals as scheduled in Part 4.
- B. Coordinate color and type with Developer.
- C. Cultivate beds with 1 inch peat moss, thoroughly mixed, prior to each change-out.
- D. Fertilize as noted herein.

END OF SECTION

4. SCHEDULES

MAINTENANCE SCHEDULE

TASK	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
FERTILIZE												
Shade Trees				●								
Spring Flowering Trees & Shrubs			(3-1-2 RATIO) AFTER BLOOM	●	●					(1-2-1 RATIO) ●		
Tree Crape myrtle					● (1-2-1 RATIO)							
Shrubs/Groundcover			(3-1-2 RATIO) ●					(3-1-2 RATIO) ●				
Annuals				● (1-2-1 RATIO)					(1-2-1 RATIO) ●			
Perennials				● (1-2-1 RATIO)				●				
HERBICIDES												
Post Emergent			●	-----	-----	-----	-----	-----	●			
Shrubs/Groundcover		●		●		●		●				
PESTICIDES	●	-----	-----	-----	(AS REQUIRED)	-----	-----	-----	-----	-----	-----	●
PRUNING												
Shade Trees		●										
Spring Flowering Trees & Shrubs				●	-----	●						
				(AFTER BLOOM)								
Evergreen Shrubs/Groundcover	●	-----	-----	-----	(AS REQUIRED)	-----	-----	-----	-----	-----	-----	●
Tree Crape myrtle		●				●	-----	-----	-----	●		
						(REMOVE SUCKER GROWTH)						
CLEAN-UP/LITTER REMOVAL	●	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	●
IRRIGATION CHECK	●	●	●	-----	-----	-----	(WEEKLY)	-----	-----	-----	-----	●
FLOWER PLANTING				●					(BEDDING PLANTS & BULBS)		●	

DEED OF TRUST TO SECURE PERFORMANCE

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

KNOW ALL MEN BY THESE PRESENTS:

THAT _____, a _____, whose mailing address is _____, hereinafter called Grantor, for the purpose of securing the indebtedness hereinafter described, and in consideration of the sum of TEN DOLLARS (\$10.00) to us in hand paid by the Trustee hereinafter named, the receipt of which is hereby acknowledged, and for the further consideration of the uses, purposes and trusts hereinafter set forth, have granted, sold and conveyed, and by these presents do grant, sell and convey unto _____, Trustee, whose mailing address is _____, and his substitutes or successors, that certain tract or tracts of real property (the "Property") described in Exhibit "A" attached hereto and made a part hereof for all purposes.

TO HAVE AND TO HOLD the Property, together with the rights, privileges and appurtenances thereto belonging, unto the said Trustee and to his substitutes or successors forever. And Grantor named herein do hereby bind themselves, their heirs, executors, administrators and assigns to warrant and forever defend the Property unto the said Trustee, his substitutes or successors and assigns forever, against the claim, or claims, of all persons claiming or to claim the same or any part thereof, arising by, through or under Grantor, but not otherwise, and subject to all easements and other restrictions of record as of the date hereof.

This conveyance, however, is made in TRUST for the following purposes:

WHEREAS, Gaylord Properties, Inc. ("Gaylord") and Columbus Realty Trust ("Columbus", Gaylord and Columbus being collectively referred to as "Obligors") and the Town of Addison, Texas ("Beneficiary") have heretofore entered into a certain Master Facilities Agreement (the "Development Agreement"), dated _____, 1995, wherein Beneficiary agreed to expend certain funds for the development of public infrastructure and improvements necessary for the development of the Property, and Obligors agree to reimburse the Beneficiary a portion of the funds expended by Beneficiary under certain conditions as set out in Section 8 of the Development Agreement (the "Reimbursement Obligations");

WHEREAS, the Property, which was owned previously by Gaylord, was contributed to Grantor to be developed by Grantor;

WHEREAS, Obligors are partners in Grantor;

Master Facilities Agreement With Amendments – EXHIBIT 1

WHEREAS, Grantor has agreed to execute this Deed of Trust in order to secure payment of the Reimbursement Obligations as required by the terms of the Development Agreement, and in order to induce Beneficiary to expend funds to develop public infrastructure and improvements to secure the Property.

In the event Obligors do and perform the Reimbursement Obligations and satisfy their obligations pursuant to Section 8 of the Development Agreement with respect to the Phase (as defined in the Development Agreement) in which the Property is located, then this conveyance shall become null and void and of no further force and effect, and shall be released by Beneficiary.

Grantor agrees that in the event of default in the payment of the Reimbursement Obligations or in the event of default by Grantor in the obligations or covenants contained in this Deed of Trust, it shall thereupon, or at any time thereafter, be the duty of the Trustee, or his successor or substitute as hereinafter provided, at the request of Beneficiary (which request is hereby conclusively presumed), to enforce this Deed of Trust to Secure Performance, and after advertising the time, place and terms of the sale of the Property, then subject to the lien hereof, for at least twenty-one (21) days preceding the date of sale by posting written or printed notice thereof at the courthouse door of the county where the Property is situated, which notice may be posted by the Trustee acting, or by any person acting for him, and the Beneficiary has, at least twenty-one (21) days preceding the date of sale, served written or printed notice of the proposed sale by certified mail on each debtor obligated to pay the indebtedness secured by this Deed of Trust to Secure Performance according to the records of Beneficiary, by the deposit of such notice, enclosed in a postpaid wrapper, properly addressed to such debtor at debtor's most recent address as shown by the records of Beneficiary, in a post office or official depository under the care and custody of the United States Postal Service, the Trustee shall sell the Property, then subject to the lien hereof, at public auction in accordance with such notice at the courthouse door of the county where the Property is situated on the first Tuesday in any month between the hours of 10:00 A.M. and 4:00 P.M., to the highest bidder for cash, and make due conveyance to the purchaser or purchasers, with general warranty binding Grantor, their heirs and assigns; and out of the money arising from such sale the Trustee shall pay, first, all expenses of advertising the sale and making the conveyance, including a reasonable commission to himself and, second, to Beneficiary the full amount of the Reimbursement Obligations that is then owing to Beneficiary, rendering the balance of the sales price, if any, to the person or persons legally entitled thereto; and the recitals in the conveyance to the purchaser or purchasers shall be full and conclusive evidence of the truth of the matters therein stated, and all prerequisites to said sale shall be presumed to have been performed, and such sale and conveyance shall be conclusive against Grantor, their heirs and assigns; said sale and deed to be made subject to the Superior Lien (hereinafter defined).

Notwithstanding the provisions of the immediately preceding paragraph, all notices provided for therein may be made in such manner as may be permitted or required by Section 51.002 of the Texas Property Code (as now written or hereafter amended or succeeded) relating to the sale of real estate and/or by Chapter 9 of the Texas Business and Commerce Code,

Master Facilities Agreement With Amendments – EXHIBIT 1

as amended, relating to the sale of collateral after default by a debtor, or by any other present or subsequent laws.

Beneficiary shall have the right to purchase at any sale of the Property, being the highest bidder and to have the amount for which such Property is sold credited on the total sums owed Beneficiary.

Beneficiary in any event is hereby authorized to appoint a substitute trustee, or a successor trustee, to act instead of the Trustee named herein without other formality than the designation in writing of a substitute or successor trustee; and the authority hereby conferred shall extend to the appointment of other successor and substitute trustees successively until the full and final payment and satisfaction of the Reimbursement Obligations, and each substitute and successor trustee shall succeed to all of the rights and powers of the original Trustee named herein.

The term "Grantor" used in this instrument shall also include any and all successors in interest of Grantor to all or any part of the Property as well as any and all purchasers thereof at any sale made hereunder by the Trustee or Substitute Trustee, and the provisions of this Deed of Trust to Secure Performance shall be covenants running with the land.

If this Deed of Trust to Secure Performance is or becomes binding upon one person or upon a corporation, the plural reference to Grantor shall be held to include the singular and all of the agreements and covenants herein undertaken to be performed by and the rights conferred upon Grantor, shall be binding upon and inure to the benefit of not only Grantor respectively but also their respective heirs, executors, administrators, grantees, successors and assigns.

In the event any sale is made of the Property, or any portion thereof, under the terms of this Deed of Trust to Secure Performance, Grantor, their heirs and assigns, shall forthwith upon the making of such sale surrender and deliver possession of the Property so sold to the purchaser at such sale, and in the event of their failure to do so they shall thereupon from and after the making of such sale be and continue as tenants at will of such purchaser, and in the event of their failure to surrender possession of said Property upon demand, the purchaser, his heirs or assigns, shall be entitled to institute and maintain an action for forcible detainer of said Property in the Justice of the Peace Court in the Justice Precinct in which such Property, or any part thereof, is situated.

The lien of this Deed of Trust and all rights of Beneficiary hereunder are expressly subordinate and inferior to the lien described on Exhibit B hereto (the "Superior Lien"), and Beneficiary, by acceptance hereof, agrees to execute any document reasonably requested by the holder of the Superior Lien to evidence such subordination. Beneficiary, by acceptance hereof, further agrees, when requested by the holder of the Superior Lien, to give such holder notice of any default by Grantor or Obligors in accordance with the terms of the Development Agreement and to permit any such holder the option to cure such default in accordance with the terms of the Development Agreement.

Master Facilities Agreement With Amendments – EXHIBIT 1

EXECUTED the _____ day of _____, 1996.

By: _____
Its: _____

THE STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the _____ day of _____, 1996, by _____ of _____, a Texas corporation, on behalf of said corporation.

Notary Public - State of Texas

My Commission Expires:

DA951910338
071295aln1
186:3012-3

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

AMENDMENT TO MASTER FACILITIES AGREEMENT

This Amendment to Master Facilities Agreement (the "Amendment") is entered into by and between the Town of Addison, Texas, ("the City"), and Gaylord Properties, L.P., a Texas limited partnership ("Gaylord") (Gaylord being the successor in interest to Gaylord Properties, Inc., a Texas corporation), and Columbus Realty Trust, a Texas real estate investment trust ("Columbus").

RECITALS

1. The City, Gaylord and Columbus entered into that agreement entitled "Master Facilities Agreement" dated July 17, 1995 regarding the construction of certain public improvements within that area generally known as Addison Circle and described as the "Property" in Section 3 of the Master Facilities Agreement.

2. The City, Gaylord and Columbus desire to amend the Master Facilities Agreement as set forth herein.

Now, therefore, for and in consideration of the above and foregoing premises, and other good and valuable consideration, the CITY, GAYLORD and COLUMBUS do hereby contract and agree as follows:

Section 1. Amendment. The Master Facilities Agreement is hereby amended as follows:

A. Section 7 is amended so that it shall hereafter read as follows:

"Section 7. Allocation of Funds, Payment and Participation by Gaylord and Columbus in Excess Costs.

A. Allocation by Phase and Payment. Funds for the design and construction of the Public Infrastructure Improvements shall be allocated in the maximum amount of \$4,800,000 for Phase I (the "City's Phase I Costs") and \$4,200,000 for Phase II. If the actual costs of the Public Infrastructure Improvements for either Phase I or Phase II are less than the maximum amount allocated for the respective Phase, the funds remaining for that Phase shall be reallocated to pay for or to reimburse actual costs of Improvements for the other Phase. Payment shall be made by the City in accordance with the procedures set forth in Section 6 of this Agreement, not to exceed the maximum allocation per Phase except as provided herein.

B. Allocation by Subphase. If any Phase of the project is to be developed in subphases, payment by the City for any subphase shall not exceed the costs projected in the Schedule for Public Infrastructure Improvements set forth in

Exhibit 4 associated with such subphase, except by amounts by which actual costs for Public Infrastructure Improvements associated with contracts awarded for prior subphases are less than the total costs projected for such prior subphases set forth in Exhibit 4.

C. Participation in Costs by Gaylord and Columbus. In the event that actual design and construction costs for any Phase or subphase of the development of the Property (such actual costs being determined at the time of the acceptance and award by the City of a construction contract to construct the Phase or subphase Improvements, and subject to review as a result of any change order with respect to such construction contract) shall exceed the total costs projected in the Schedule for Public Infrastructure Improvements set forth in Exhibit 4, Gaylord and Columbus shall pay the City the difference between actual and projected total costs prior to the commencement of construction of the Improvements for the subphase, except as otherwise agreed to by the City and Gaylord and Columbus.

D. Addison Circle Rotary Art.

1. Exhibit 4 attached hereto ("Addison Urban Center Cost Projections of Infrastructure Improvements") identifies the "Quorum Rotary Open Space (0.58 Ac)" (the "Rotary Open Space") as a Phase I public infrastructure improvement, the projected total cost of which is \$936,000. Such projected cost is exclusively for the design, engineering, and construction of a work of art (the "Rotary Art") to be placed in the rotary park/open space ("O-____") as depicted on the Concept Plan. The City is the sole owner of the design and concept of the Rotary Art and any copyright or other intellectual property rights in connection with the Rotary Art, and upon construction of the Rotary Art will be the sole owner of the Rotary Art. Exhibit 5 attached hereto ("Schedule for Parks and Open Space Improvements") identifies the maximum allowance for improvements to the Rotary Open Space as \$1,000,000, and such maximum has been allocated by the parties hereto (out of the City's Phase I Costs) for the Rotary Art. Costs and expenses incurred for the design (including, but not limited to, work by artists, architects, and landscape architects), engineering, inspection, and construction of the Rotary Art (the "Rotary Art Costs") may exceed \$1,200,000. Notwithstanding any other provision of this Agreement, to the extent that the Rotary Art Costs exceed \$1,200,000 (the "Excess Rotary Art Costs"), Columbus shall pay to the City one-half (1/2) of all such Excess Rotary Art Costs; provided, however, that Columbus' obligation to pay one-half (1/2) of the Excess Rotary Art Costs shall not exceed \$350,000.

2. The Rotary Art will be constructed pursuant to a construction contract entered into between the City and a third-party contractor. Not later than seven (7) days following the date of the execution of the Rotary Art construction contract by the City (or any additive change order thereto), Columbus shall pay to the City Columbus' share of the Excess Rotary Art Costs as described above. In the event of a deductive change order to the Rotary Art construction contract which would reduce the amount of Columbus' share of the Excess Rotary Art

Master Facilities Agreement With Amendments – EXHIBIT 1

the amount of such reduction not later than seven (7) days following the execution of such change order.

E. **Limitations on Payments.**

1. The parties recognize that the public parks and open spaces depicted and described in the Concept Plan to be provided to the City by Gaylord and Columbus in the development of the Property must, within limits, meet a certain standard of excellence. Therefore, the parties have agreed, in improving those public parks and open spaces, on a maximum and minimum expenditure for such parks and open spaces as set forth in Exhibit 5, the Schedule for Parks and Open Space Improvements.

2. The City shall not pay for any improvements necessitated by a traffic impact analysis or facilities study required by either the Concept Plan or a Development Plan.

3. No payment for Improvements to any Phase or subphase of the development of the Property shall be made by the City until a Development Plan for the Phase or subphase has been approved and all rights-of-way for the Improvements to serve such Phase or subphase have been dedicated to the City, as required in Section 5 of this Agreement."

Section 2. No Other Amendments. Except to the extent modified or amended herein, all other terms and obligations of the Master Facilities Agreement shall remain unchanged and in full force and effect.

Section 3. Authority to Execute. The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Amendment on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.

EXECUTED at Dallas County, Texas on the day and year first written above.

TOWN OF ADDISON, TEXAS

GAYLORD PROPERTIES, ^{LP} ~~INC.~~

By: Ron Whitehead
Ron Whitehead, City Manager

By: C. R. H.

ATTEST:

COLUMBUS REALTY TRUST

By: C. Moran
Carmen Moran, City Secretary

By: B. J. P.

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
~~COUNTY OF DALLAS~~ §

This instrument was acknowledged before me on OCTOBER 28, 1997 by Ron Whitehead, City Manager of the Town of Addison, Texas, a Texas municipal corporation, on behalf of the said municipal corporation.



Michele L. Covino
NOTARY PUBLIC, State of Texas

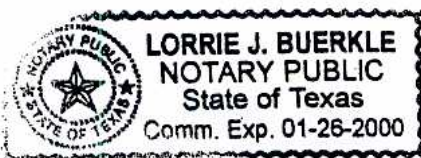
STATE OF ~~TEXAS~~ §
 §
 §
COUNTY OF ~~DALLAS~~ §
 §
 §

This instrument was acknowledged before me on NOVEMBER 13, 1997 by CLAYTON I. BENNETT, VICE PRESIDENT of Gaylord Properties, ^{LP}~~Inc.~~, a Texas ^{limited partnership}~~corporation~~, on behalf of the said ^{partnership}~~corporation~~.

Joyce Johnson
NOTARY PUBLIC, State of ~~Texas~~ OKLAHOMA

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on October 30, 1997 by Bryant Nail, Vice President of Columbus Realty Trust, a Texas real estate investment trust, on behalf of the said real estate investment trust.



Lorrie J. Buerkle
NOTARY PUBLIC, State of Texas

EXHIBIT 4

**ADDISON URBAN CENTER COST PROJECTIONS OF INFRASTRUCTURE
IMPROVEMENTS**

COPY

ADDISON URBAN CENTER
 COST PROJECTIONS OF
 INFRASTRUCTURE IMPROVEMENTS

06/22/95

PHASE I

ITEM	BASE COST	EXCESS COST	TOTAL COST
Quorum Drive (1650 L.F.)	\$464,000	\$464,000	\$928,000
Mildred West of Quorum (3611 L.F.)	\$140,000	\$140,000	\$280,000
Quorum Rotary Open Space (0.58 Ac)	\$468,000	\$468,000	\$936,000
Mosque Park (0.96 Ac)	\$0	\$535,000	\$535,000
Street R - 3 (425 L.F.)	\$0	\$445,000	\$445,000
Street R - 4 (575 L.F.)	\$0	\$596,000	\$596,000
Street M - 1 (680 L.F.)	\$0	\$780,000	\$780,000
TOTALS	\$1,072,000	\$3,428,000	\$4,500,000

Master Facilities Agreement With Amendments – EXHIBIT 1

PHASE II			
ITEM	BASE COST	EXCESS COST	TOTAL COST
Quorum Drive (2075 L.F.) 1/2 of street)	\$260,000	\$260,000	\$520,000
Mildred East of Quorum (419 L.F.) West of Spectrum)	\$159,000	\$159,000	\$318,000
Spectrum (1275 L.F.)	\$182,000	\$182,000	\$364,000
East Mildred Open Space (1.13 Ac)	\$305,000	\$305,000	\$610,000
Quorum North Park (0.69 Ac)	\$0	\$295,000	\$295,000
Mews Park (1.43 Ac)	\$0	\$675,000	\$675,000
R - 2 (525 L.F.)	\$0	\$270,000	\$270,000
R - 3 (400 L.F.)	\$0	\$205,000	\$205,000
R - 4 (630 L.F.)	\$0	\$322,000	\$322,000
R - 5 (325 L.F.) -	\$0	\$166,000	\$166,000
M - 2 (1275 L.F.)	\$0	\$624,000	\$624,000
Mildred east of Spectrum (590 L.F.)	\$0	\$131,000	\$131,000
TOTALS	\$906,000	\$3,594,000	\$4,500,000

Note: The above cost projections include costs for private utilities, engineering, special plan review, independent inspection and construction costs associated with Phases I and II of the Urban Center.

06/22/95

EXHIBIT 5

SCHEDULE FOR PARKS AND OPEN SPACE IMPROVEMENTS

SCHEDULE FOR PARKS AND
OPEN SPACE IMPROVEMENTS
ADDISON URBAN DISTRICT
JUNE 21, 1995

		MINIMUM ALLOWANCE	MAXIMUM ALLOWANCE
1.)	Quorum Rotary (0.58 Ac)	870,000	1,000,000
2.)	Bosque Park (0.96 Ac)	500,000	570,000
SUBTOTAL PHASE I		1,370,000	1,570,000
3.)	Quorum North Park (0.69 Ac)	290,000	300,000
4.)	East Mildred Open Space (1.13 Ac)	580,000	640,000
5.)	Mews Park (1.43 Ac)	650,000	700,000
SUBTOTAL PHASE II		1,520,000	1,640,000
TOTAL		2,890,000	3,210,000

Estimates include all costs associated with bid document preparation, construction, inspection, utility service, etc. necessary to complete the parks.

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

SECOND AMENDMENT TO MASTER FACILITIES AGREEMENT

This Second Amendment to Master Facilities Agreement (the "Second Amendment") is entered into by and between the Town of Addison, Texas, ("the City"), and Gaylord Properties, L.P., a Texas limited partnership ("Gaylord") (Gaylord being the successor in interest to Gaylord Properties, Inc., a Texas corporation), and Post Apartment Homes, L.P., a Georgia limited partnership ("Post") (Post being the successor in interest by merger to Columbus Realty Trust).

RECITALS

1. The City, Gaylord and Post (by and through its predecessor in interest, Columbus Realty Trust) entered into that agreement entitled "Master Facilities Agreement" dated July 17, 1995 regarding the construction of certain public improvements within that area generally known as Addison Circle and described as the "Property" in Section 3 of the Master Facilities Agreement.

2. The Master Facilities Agreement was amended by that instrument entitled "Amendment to Master Facilities Agreement" dated OCTOBER 28, 1997 cn.

3. The City, Gaylord and Post desire to amend the Master Facilities Agreement as set forth herein.

NOW, THEREFORE, for and in consideration of the above and foregoing premises, and other good and valuable consideration, the CITY, GAYLORD and POST do hereby contract and agree as follows:

Section 1. Amendments. The Master Facilities Agreement is hereby amended as follows:

A. Section 7.D. is amended so that it shall hereafter read as follows:

"D. Addison Circle Rotary Art.

1. Exhibit 4 attached hereto ('Addison Urban Center Cost Projections of Infrastructure Improvements') identifies the 'Quorum Rotary Open Space (0.58 Ac)' (the 'Rotary Open Space') as a Phase I public infrastructure improvement, the projected total cost of which is \$936,000. Such projected cost is exclusively for the design, engineering, and construction of a work of art (the 'Rotary Art') to be placed in the rotary park/open space ('O-____') as depicted on the Concept Plan. The City is the sole owner of the design and concept of the Rotary Art and any copyright or other intellectual property rights in connection with the Rotary Art, and upon construction of the Rotary Art will be the sole owner of the Rotary

Master Facilities Agreement With Amendments – EXHIBIT 1

Art. Exhibit 5 attached hereto ('Schedule for Parks and Open Space Improvements') identifies the maximum allowance for improvements to the Rotary Open Space as \$1,000,000, and such maximum has been allocated by the parties hereto (out of the City's Phase I Costs) for the Rotary Art. As of the date of this Second Amendment, it has been determined that the costs and expenses to be incurred for the design (including, but not limited to, work by artists, architects, and landscape architects), engineering, inspection, and construction of the Rotary Art (the 'Rotary Art Costs') exceed \$1,000,000. Notwithstanding any other provision of this Agreement, out of the first \$1,900,000.00 of Rotary Art Costs, the City shall pay \$1,550,000.00 and Post shall pay \$350,000.00. In the event that Rotary Art Costs exceed \$1,900,000.00, the City shall pay the initial \$200,000.00 of any such excess Rotary Art Costs and Post shall pay the next \$100,000.00 of such excess Rotary Art Costs (the payments by Post, including the payments of \$350,000.00 and \$100,000.00, are herein referred to together as the 'Post Payments'). The City shall be responsible for any Rotary Art Costs which exceed \$2,200,000.00. The City's responsibility under this paragraph for Rotary Art Costs exceeding \$1,000,000 shall be in addition to the City's Phase I and Phase II Costs.

2. Post shall make the Post Payments by making 15 monthly payments to the City in the amount of \$30,000.00 each (the "Monthly Payment") in accordance with the following:

The City has entered into a contract with Westerchil Construction Company ('Westerchil') for the construction of the Rotary Art. Upon the City's receipt of the first invoice for payment from Westerchil, the City shall send to Post a copy of the invoice together with a request for the first Monthly Payment. Post shall make the first Monthly Payment not later than ten (10) days following the date of Post's receipt of the City's request for the first Monthly Payment. The second Monthly Payment shall be due and payable to the City on or before the 15th day of the month next following the month in which the first Monthly Payment is made, and Post shall thereafter make a Monthly Payment to the City on or before the 15th day of each successive month; provided, however, that Post's final \$100,000 (or portion thereof) in Post Payments shall not be due until Post is presented with documentation that the Rotary Art Costs have exceeded \$2,100,000.

During the period of the assembling and placement of the Art Piece, Post may be requested by the City to expend additional funds at or near the Quorum Rotary Open Space to facilitate such assembling and placement (e.g. funding for a fence to protect the construction staging area). Post shall provide documentation to the City of any funds so expended, and Post may deduct the amount expended from its final payment of the Post Payments."

B. Section 15 is amended so that it shall hereafter read as follows:

Master Facilities Agreement With Amendments – EXHIBIT 1

"Section 15. Notices. Where the terms of this Agreement require that notice in writing be provided, such notice shall be deemed delivered three (3) days following the deposit of the notice in the United States mail, postage prepaid, and sent by certified mail, return receipt requested and properly addressed as follows:

TO TOWN OF ADDISON:

P.O. Box 144
Addison, Texas 75001

Attn: City Manager

TO GAYLORD PROPERTIES, ^{LP} ~~INC.~~:

10111

~~1011~~ N. Central Expressway
Dallas, Texas 75231

David Story
Attn: ~~Glenn Stinchcomb~~

TO POST:

15851 Dallas Parkway
Suite 855
Dallas, Texas 75248

Attn: Bryant Nail

with a copy to Post's General Counsel:

One Riverside
4401 Northside Parkway
Suite 800
Atlanta, Georgia 30327
Attn: Sherry W. Cohen"

Section 2. No Other Amendments; No Knowledge of Default. Except to the extent modified or amended herein, all other terms and obligations of the Master Facilities Agreement shall remain unchanged and in full force and effect. To the best of each party's knowledge, there presently exists no default by any of the parties under the Master Facilities Agreement, as amended.

Section 3. Authority to Execute. The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Amendment on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.

Master Facilities Agreement With Amendments – EXHIBIT 1

EXECUTED at Dallas County, Texas on the day and year first written above.

TOWN OF ADDISON, TEXAS

By: Ron Whitehead
Ron Whitehead, City Manager

ATTEST:

By: C Moran
Carmen Moran, City Secretary

~~GAYLORD PROPERTIES, INC.~~
GAYLORD Properties LP

By: E.K. Gaylord II
Name: E.K. GAYLORD II
Title: President

POST APARTMENT HOMES, L.P.,
a Georgia Limited Partnership,

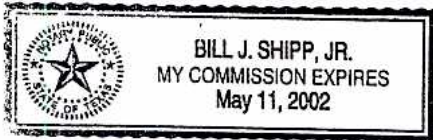
By: Post GP Holdings, Inc.,
a Georgia corporation,
General Partner

By: Sherry W. Cohen
Name: Sherry W. Cohen
Title: Exec. Vice President

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on DECEMBER 2, 1998 by Ron Whitehead, City Manager of the Town of Addison, Texas, a Texas municipal corporation, on behalf of the said municipal corporation.



Bill J. Shipp Jr.
NOTARY PUBLIC, State of Texas

STATE OF Georgia §
 §
COUNTY OF Fulton §

This instrument was acknowledged before me on the 4th day of December, 1998, by Sherry W. Cohen, Exec. Vice Pres., of Post GP Holdings, Inc., on behalf of said corporation in its capacity as general partner of Gaylord Properties, L.P., a ~~Texas~~ limited partnership, on behalf of said limited partnership. Post Apartment Homes, L.P. Georgia



Marcelle Lea
NOTARY PUBLIC, State of ~~Texas~~ Georgia

STATE OF Oklahoma §
 §
COUNTY OF Oklahoma §

This instrument was acknowledged before me on the 14th day of December, 1998, by Robert Shaw, E.K. GAYLORD II, President of Post GP Holdings, Inc., on behalf of said corporation in its capacity as general partner of Post Apartment Homes, L.P., a ~~Georgia~~ Gaylord Properties LP limited partnership, on behalf of said limited partnership. Texas

Kelly L Weaver
NOTARY PUBLIC, State of ~~Texas~~ Oklahoma

COPY

ADDISON URBAN CENTER
COST PROJECTIONS OF
INFRASTRUCTURE IMPROVEMENTS

06/22/95

PHASE I

ITEM	BASE COST	EXCESS COST	TOTAL COST
Quorum Drive (1650 L.F.)	\$464,000	\$464,000	\$928,000
Mildred West of Quorum (3611 L.F.)	\$140,000	\$140,000	\$280,000
Quorum Rotary Open Space (0.58 Ac)	\$468,000	\$468,000	\$936,000
Bosque Park (0.96 Ac)	\$0	\$535,000	\$535,000
Street R - 3 (425 L.F.)	\$0	\$445,000	\$445,000
Street R - 4 (575 L.F.)	\$0	\$596,000	\$596,000
Street M - 1 (680 L.F.)	\$0	\$780,000	\$780,000
TOTALS	\$1,072,000	\$3,428,000	\$4,500,000

Master Facilities Agreement With Amendments – EXHIBIT 1

ITEM	PHASE II		
	BASE COST	EXCESS COST	TOTAL COST
Quorum Drive (2075 L.F.) (1/2 of street)	\$260,000	\$260,000	\$520,000
Mildred East of Quorum (419 L.F.) West of Spectrum)	\$159,000	\$159,000	\$318,000
Spectrum (1275 L.F.)	\$182,000	\$182,000	\$364,000
East Mildred Open Space (1.13 Ac)	\$305,000	\$305,000	\$610,000
Quorum North Park (0.69 Ac)	\$0	\$295,000	\$295,000
Mews Park (1.43 Ac)	\$0	\$675,000	\$675,000
R - 2 (525 L.F.)	\$0	\$270,000	\$270,000
R - 3 (400 L.F.)	\$0	\$205,000	\$205,000
R - 4 (630 L.F.)	\$0	\$322,000	\$322,000
R - 5 (325 L.F.) -	\$0	\$166,000	\$166,000
M - 2 (1275 L.F.)	\$0	\$624,000	\$624,000
Mildred east of Spectrum (590 L.F.)	\$0	\$131,000	\$131,000
TOTALS	\$906,000	\$3,594,000	\$4,500,000

Note: The above cost projections include costs for private utilities, engineering, special plan review, independent inspection and construction costs associated with Phases I and II of the Urban Center.

06/22/95

SCHEDULE FOR PARKS AND
OPEN SPACE IMPROVEMENTS
ADDISON URBAN DISTRICT
JUNE 21, 1995

		MINIMUM ALLOWANCE	MAXIMUM ALLOWANCE
1.)	Quorum Rotary (0.58 Ac)	870,000	1,000,000
2.)	Bosque Park (0.96 Ac)	500,000	570,000
SUBTOTAL PHASE I		1,370,000	1,570,000
3.)	Quorum North Park (0.69 Ac)	290,000	300,000
4.)	East Mildred Open Space (1.13 Ac)	580,000	640,000
5.)	Mews Park (1.43 Ac)	650,000	700,000
SUBTOTAL PHASE II		1,520,000	1,640,000
TOTAL		2,890,000	3,210,000

Estimates include all costs associated with bid document preparation, construction, inspection, utility service, etc. necessary to complete the parks.

VARIATIONS/ALTERATIONS:

- REQUIREMENTS:
PURSUANT TO SECTION 1.8(B) OF THE URBAN CENTER DISTRICT REGULATIONS, THE APPLICATION FOR CONCEPT PLAN APPROVAL INCLUDES THE FOLLOWING VARIATIONS AND ALTERATIONS FROM THE PROPOSED CONCEPT PLAN SUBMITTAL:
1. MIX OF USES FOR SEPARATE PHASES.
 2. FLOOR AREAS BY CATEGORY OF USE.
 3. LOCATIONS OF PRIVATE RECREATION AREAS.
 4. A DETAILED TIME SCHEDULE FOR PHASES AND ALTERNATIVE USES. THIS CONCEPT PLAN INCLUDES A GENERAL TIME SCHEDULE AND PHASE SEQUENCE FOR THE RESIDENTIAL SUBDISTRICT.
 5. STREET ADDRESS, NAMES OF STREETS, STREET NUMBERING, FINAL LOCATION OF NEW STREETS (SHOWING LOCATION FOR NEW STREETS ARE PRELIMINARY ONLY), AND DETAILS REGARDING RIGHTS-OF-WAY AND EASEMENTS TO BE ABANDONED.

GENERAL NOTES:

1. ANY STREET DESIGNATIONS THAT ARE NOT WITHIN THE BOUNDARIES OF THE DISTRICT HAVE NO EFFECT, AND DO NOT COMMIT THE CITY, OR ADJACENT PROPERTY OWNERS, TO OBTAIN R.O.W. OR PARTICIPATE IN THE CONSTRUCTION OF SUCH STREETS.
2. A FINAL STREET DESIGN PLAN FOR THE DISTRICT, ADDRESSING FINAL STREET LOCATIONS, LAYOUT, INTERSECTION RADII, ROTARY DESIGN, SPECTRUM ROAD CROSSINGS OF RAILROAD LINE, DEAD-END STREETS, AND SUELLER CONSIDERATIONS SHOWN ON THE STREET DESIGN AND LAYOUT FOR THE CONCEPT PLAN SHALL BE SUBMITTED FOR STAFF APPROVAL IN ACCORDANCE WITH STANDARDS IN THE CITY'S SUBDIVISION ORDINANCE AND FIRE CODE PRIOR TO APPROVAL OF THE FIRST DEVELOPMENT PLAN FOR THE DISTRICT.
3. A FINAL UTILITY AND DRAINAGE PLAN FOR THE DISTRICT, ADDRESSING UTILITIES AND DRAINAGE EGRESS, BOTH THE DISTRICT AND THE PROPERTIES NORTH AND WEST OF THE PROPOSED DISTRICT SHALL BE SUBMITTED FOR STAFF APPROVAL IN ACCORDANCE WITH THE CITY STANDARDS FOR UTILITY AND DRAINAGE FACILITY CONSTRUCTION PRIOR TO APPROVAL OF THE FIRST DEVELOPMENT PLAN FOR THE DISTRICT.
4. ALL OPEN SPACE IN PHASE ONE, WHICH INCLUDES TRACTS O-1, O-2, AND O-3, SHALL BE DEDICATED THROUGH A SUBDIVISION PLAT PRIOR TO THE ISSUANCE OF A BUILDING PERMIT FOR THE FIRST DEVELOPMENT IN PHASE ONE.
5. ALL OPEN SPACE IN PHASE TWO, WHICH INCLUDES TRACTS O-4, O-5, O-6, AND O-7, SHALL BE DEDICATED THROUGH A SUBDIVISION PLAT PRIOR TO THE ISSUANCE OF A BUILDING PERMIT AS REQUIRED BY THE ORDINANCE AND AS FOLLOWS: TRACT O-1 AND O-2 SHALL BE DEDICATED BY PLAT PRIOR TO THE ISSUANCE OF A BUILDING PERMIT ON THE FIRST DEVELOPMENT IN PHASE II. TRACT O-3 SHALL BE DEDICATED WITH THE SUBMISSION OF A PLAT FOR TRACT 2D, AND O-4 SHALL BE DEDICATED WITH THE SUBMISSION OF A PLAT FOR TRACT 3-P.

PHASE THREE

PHASE TWO

PHASE ONE

RESIDENTIAL SUBDISTRICT

RESIDENTIAL UNITS REQUIRED TO MEET THE 1500 UNIT MINIMUM SHALL BE DEVELOPED ON THOSE SITES DESIGNATED MIXED-USE RESIDENTIAL IN PHASES I AND 2.

- MIXED USE WITH RESIDENTIAL (RESIDENTIAL WITH NON-RESIDENTIAL GROUND FLOOR USES)
- MIXED USE WITH RESIDENTIAL ALTERNATIVE USE, MIXED USE WITHOUT RESIDENTIAL

PUBLIC OPEN SPACE

- PUBLIC OPEN SPACE FOR EACH PHASE TO BE DEDICATED BY PLAT PRIOR TO THE ISSUANCE OF A BUILDING PERMIT ON THE FIRST DEVELOPMENT WITHIN THAT PHASE.

Tract	Approx. Net Acreage	Use	Max. Floor Area (sf)
PHASE ONE: UTA999-000000			
1-1	1.5	Mixed Use with Residential	303,881
1-2	1.85	Mixed Use with Residential	380,110
1-3	1.99	Mixed Use with Residential	305,791
0-1	0.34	Open Space - Bouquet	0
0-2	2.85	Open Space - Special Events	0
0-3	0.35	Open Space - Entry	0
Lot	9.20		188,784
PHASE TWO: UTA999-000001			
2-1	1.15	Mixed Use with Residential	176,500
2-2	1.50	Mixed Use with Residential	187,500
2-3	2.43	Mixed Use with Residential	518,600
2-4	1.37	Mixed Use with Residential	280,300
2-5	0.95	Mixed Use with Residential	204,800
2-6	1.50	Mixed Use with Residential	433,300
2-7	2.24	Mixed Use with Residential	569,300
2-8	1.8	Mixed Use with Residential	383,600
0-4	3.31	Open Space - Special Events	0
0-5	0.74	Open Space - Bouquet	0
0-6	0.68	Open Space - Openum East	0
0-7	1.43	Open Space - Openum West	0
Lot	18.22		1,733,200
PHASE THREE: UTA999-000002			
3-1	1.98	Mixed Use with Residential	394,000
3-2	1.68	Mixed Use with Residential	334,600
3-3	2.31	Mixed Use with Residential	461,800
3-4	1.91	Mixed Use with Residential	381,200
3-5	0.88	Mixed Use with Residential	168,700
Lot	8.44		1,430,300
TOTAL GRIDS	25.358	Open FAR - 1.750 to 1	4,450,505
			Not to exceed

FAIRLY DIVIDABLE SQUARE FOOTAGE NOTES:

1. The total allowable floor area for the district shall not exceed a gross FAR of 1.75 (1.750) net.
2. The development plan shall be approved and no building permit shall be issued for any use exceeding the maximum square footage allowance for the designated sub-district.
3. No development plan shall be approved and no building permit shall be issued for any individual parcel if that parcel would cause the total gross FAR of 1.75 (1.750) for the district to be exceeded.
4. Total building square footage to be determined as building permit stage.
5. Final development plans for all phases and sub-phases designated on the concept plan shall be submitted by January 1, 2008.

This information is part of a May 30, 1995 amendment to an application for approval of a concept plan, originally submitted March 1, 1995. This sheet is part of a set of 11 plans showing the site submitted on the same date for Lots 11, 12, and 13 of Block 8, Lot 14, and 15 of Block 9, a portion of Lot 16 of Block 8, and Lot 17 and a portion of Lot 18 of Block 9, all being part of Addison's Addition, and additional unrecorded acreage of the Addison Addition Survey, located in the Town of Addison, Dallas County, Texas. This plan is being submitted by Brown Hall of Galveston County, Texas, 13071 North Dallas Parkway, Suite 111, Dallas, Texas 75248 telephone 972-714-0000.

095-032

CONCEPT PLAN

1" = 100'



ADDISON

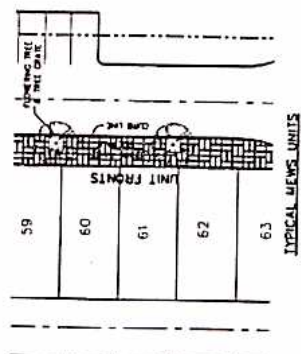
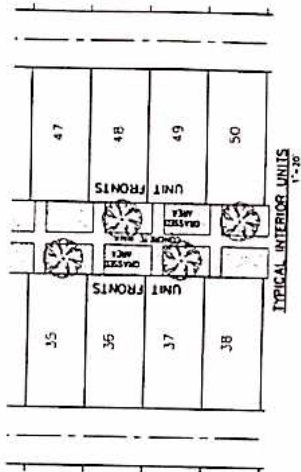
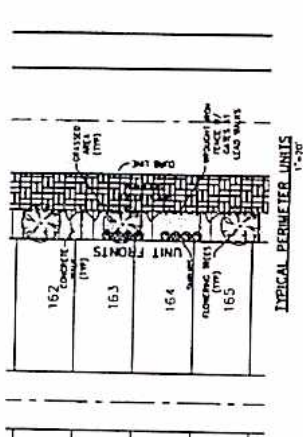
Addison Urban Center

Special District Planning • Addison, Texas

COLUMBUS

RTKL Associates Inc.

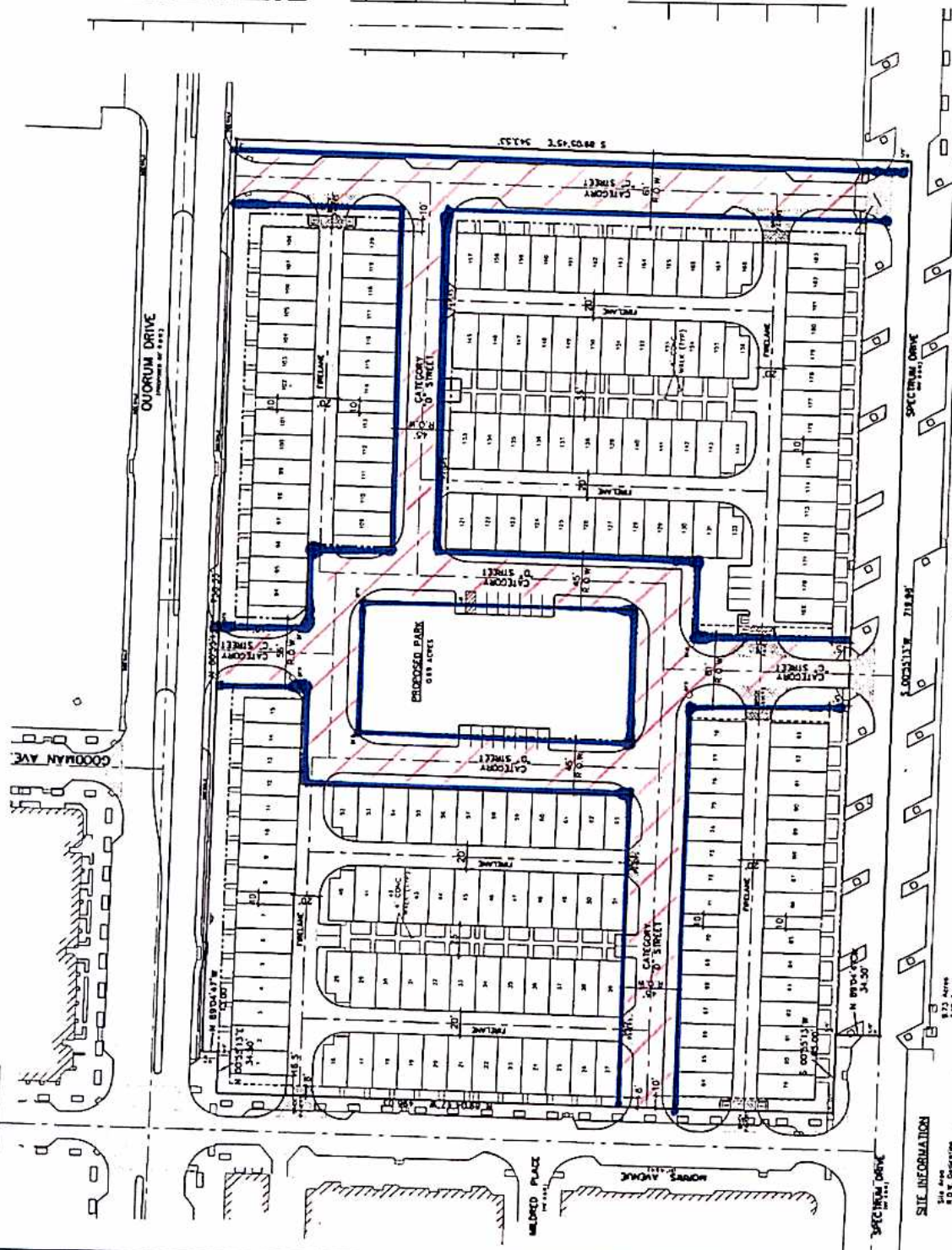
C AND D Streets – EXHIBIT 3



PRELIMINARY DEVELOPMENT
SITE PLAN

CITY PLAN
 PARK VIEW AT ADDISON PLACE
 TOWN OF ADDISON, TEXAS
 COLLIN COUNTY

<input checked="" type="checkbox"/>	BROOKETTE DAVIS PRAKE, INC.
<input checked="" type="checkbox"/>	consulting engineers
	Civil & Structural Engineering, Seismicity
	8166 North County Road, Suite 1050, Dallas, Texas 75224
	(714)921-2847, Ext. (214) 821-2848



PROPERTY OWNER:
TEKOP PROPERTIES, LP
2005 Faircloud Drive
Edmond, Oklahoma 75034
(972)888-8049

DEVELOPER:
CITYHOMES
3209 North Fitzhugh Avenue
Dallas, Texas 75204
(214)219-2900



SITE INFORMATION

[illegible]

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Council Agenda Item: #R5

SUMMARY:

Council approval is requested of an ordinance approving the new franchise with TXU Gas Company.

FINANCIAL IMPACT:

The Town will receive the same fee under the new franchise as it did under the expired franchise: 4% of gross receipts. The amount included in the 2004 budget is \$139,030.

BACKGROUND:

The process for approving franchise agreements is established in the Town's charter. On October 14 we had the first reading of the ordinance and a public hearing. The second reading occurred at the council's next meeting on October 28. Council can now vote approval of the ordinance at the November 25 meeting. The ordinance will then be published in the paper for the next four consecutive weeks and will finally become effective December 25, 2003.

RECOMMENDATION:

It is recommended Council adopt the attached franchise ordinance.

TOWN OF ADDISON, TEXAS

ORDINANCE NO: _____

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS GRANTING TO TXU GAS DISTRIBUTION, A DIVISION OF TXU GAS COMPANY, A TEXAS CORPORATION, ITS SUCCESSORS AND ASSIGNS, AS PERMITTED HEREIN, A FRANCHISE TO CONSTRUCT, MAINTAIN, AND OPERATE PIPELINES AND EQUIPMENT IN THE TOWN OF ADDISON, DALLAS COUNTY, TEXAS, FOR THE TRANSPORTING, DELIVERY, SALE, AND DISTRIBUTION OF NATURAL GAS IN, OUT OF, AND THROUGH SAID CITY FOR ALL PURPOSES; PROVIDING FOR THE PAYMENT OF A FEE OR CHARGE FOR THE USE OF THE PUBLIC RIGHTS-OF-WAYS; PROVIDING THAT SUCH FEE SHALL BE IN LIEU OF OTHER FEES AND CHARGES, EXCEPTING AD VALOREM TAXES; REPEALING ALL PREVIOUS GAS FRANCHISE ORDINANCES; PROVIDING OTHER TERMS AND CONDITIONS IN CONNECTION WITH THE PROVISION OF NATURAL GAS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:

SECTION 1. GRANT OF AUTHORITY: The Town of Addison, Texas, hereinafter called "City," hereby grants to TXU Gas Distribution, a division of TXU Gas Company, hereinafter called "Company," a non-exclusive consent to use and occupy the present and future public streets, public alleys, public highways, and public thoroughfares of the City, hereinafter referred to as "Public Rights-of-Way," for the purpose of laying, maintaining, constructing, protecting, operating, and replacing therein and thereon pipelines and all other appurtenant equipment (the "System") to deliver, transport, and distribute natural gas in, out of, and through the City for persons, firms, and corporations, including all the general public, and to sell natural gas (hereinafter, "gas" means "natural gas") to persons, firms, and corporations, including all the general public, within the City corporate limits, as such limits may be amended from time to time during the term of this franchise, said consent being granted for a term ending December 31, 2023. This consent or grant does not grant to the Company the right, privilege or authority to engage in any other business within the City other than the provision of gas sales, transportation, distribution and the furnishing of gas to the City and its residents ("residents" meaning all persons, businesses, industry, governmental agencies, and any other entity whatsoever, located, in whole or part, within the City that are or may be served by the Company hereunder).

SECTION 2. CONSTRUCTION, MAINTENANCE, OPERATION & RELOCATION OF COMPANY FACILITIES: Company shall lay, maintain, repair, construct, operate, and replace its System to minimize interference with traffic, other property, trees and other vegetation and landscaping, and improvements, shall perform work in a timely and expeditious manner, and shall promptly clean up and restore to approximate original condition all Public Rights-of-Way that it may disturb to the satisfaction of the City consistent with applicable ordinances, rules, regulations, and standards of the City to the extent that such do not conflict with state law. In determining the location of the facilities of the City and other utility franchisees within City, the City will have first priority to location, but to the extent reasonable and practicable, in the City's sole determination, it will endeavor to minimize any significant interference with then existing facilities of Company. In the event of a conflict between the location of the facilities of Company and the location of the facilities of City or other utility franchisees within Public Rights-of-Way that cannot otherwise be resolved, City or an authorized agent of City shall resolve the conflict and determine the location of the respective facilities. Company shall be required to obtain street cutting, street excavation or other special permits related to excavations in Public Rights-of-Way in connection with Company's operations in Public Rights-of-Way in accordance with the ordinances, rules and regulations of the City (including, without limitation, Chapter 60, article III and IV, of the City's Code of Ordinances), however, in no event shall the Company be required to pay permitting fees or bonds, so long as they remain a regulated gas distribution company by the Texas Railroad Commission or any successor entity.

The construction, placement, replacement, expansion, excavation, repair, maintenance, use and operation of Company's System used in connection with the provision of gas hereunder, and the operation of the business of the Company, shall be consistent and in compliance with this franchise, the ordinances, regulations and rules of the City as now existing or as they may be added to, repealed, supplemented, amended or revised (including, without limitation, Chapter 70, articles III and IV, Town of Addison Code of Ordinances) to the extent that such do not conflict with all applicable laws, regulations, and rules, whether federal, state or local. This franchise agreement shall in no way affect or impair the rights, obligations or remedies of the parties under the Texas Utilities Code, or other state or federal law. Nothing herein shall be deemed a waiver, release or relinquishment of either party's right to contest or appeal any action or decision of the other party, including ordinances adopted by the City, that it believes is contrary to any federal, state or local law or regulation.

The City reserves the right to change the grade of, construct, install, repair, alter, maintain, relocate, modify, close, reduce, or widen (together, "change") any Public Right-of-Way, within the present or future limits of the City, and at the City's request the Company shall at the Company's own

cost and expense relocate or remove its pipelines, equipment, mains, laterals, and other facilities in order to accommodate such change of any Public Right-of-Way. When the Company is required by City to remove or relocate its pipelines, equipment, mains, laterals, and/or other facilities to accommodate such change of any Public Right-of-Way, and Company is eligible under federal, state, county, local or other programs for reimbursement of costs and expenses incurred by Company as a result of such removal or relocation, and such reimbursement is required to be handled through the City, Company costs and expenses shall be included in any application by the City for reimbursement, if Company submits its cost and expense documentation to the City prior to the filing of the application. City shall provide reasonable notice to Company of the deadline for Company to submit documentation of the costs and expenses of such relocation to City. If the Company is required by the City to remove or relocate its System for any reason other than such change of or to any Public Right-of-Way, Company shall be entitled to reimbursement from the City or others of the cost and expense of such removal or relocation. When Company is required to remove or relocate its pipelines, equipment, mains, laterals and/or other facilities to accommodate such change of any Public Right-of-Way by City without reimbursement from City, Company shall have the right to seek a surcharge to recover relocation costs pursuant to Section 104.112 et al, of the Texas Utilities Code (provided such law (or any successor law thereto) is in effect at the time the City requires such removal or relocation).

Upon request of the City, Company shall remove and abate any portion of its gas System or any equipment or facility that is dangerous to life or property, and in case Company, after notice, fails or refuses to act, the City may remove or abate the same, at the sole cost and expense of Company, all without compensation or liability for damages to Company. Company shall be given adequate notice and opportunity to remove or abate. City may not take action to remove or abate without providing the Company at least five (5) business day's notice of intent to act to remove or abate Company's facilities.

If City abandons any Public Right-of-Way in which Company has facilities, such abandonment shall be conditioned on Company's right to maintain its use of the former Public Right-of-Way and on the obligation of the party to whom the Public Right-of-Way is abandoned to reimburse Company for all removal or relocation expenses if Company agrees to the removal or relocation of its facilities following abandonment of the Public Right-of-Way. If the party to whom the Public Right-of-Way is abandoned requests the Company to remove or relocate its facilities and Company agrees to such removal or relocation, such removal or relocation shall be done within a reasonable time at the expense of the party requesting the removal or relocation. If relocation cannot practically be made to another Public Right-of-Way, the expense of any right-of-way acquisition shall be considered a relocation expense to be reimbursed by the party requesting the relocation.

Company shall install, repair, maintain and replace its pipelines, equipment and other facilities in a good and workmanlike manner.

SECTION 3. INDEMNITY & INSURANCE: (A) In the event of injury to any person or damage to any property by reason of Company's construction, operation, maintenance or replacement of Company's pipeline System within Public Rights-of-Way, Company shall indemnify, defend and keep harmless the City, its officers, employees and agents, from any and all liability in connection therewith, except to the extent such injury or damage is attributable to the fault of the City, including without limitation, the City's negligent or intentional actions or omissions.

(B) Company may self-insure to the extent permitted by applicable law under any plan of self-insurance, maintained in accordance with sound accounting practices, against risks and obligations undertaken pursuant to this franchise and shall not be required to maintain insurance; provided that Company furnishes the City satisfactory evidence of the existence of an insurance reserve adequate for the risks covered by such plan of self-insurance. Company shall provide the City with evidence of the form and basis for insurance coverage or self insurance, as applicable, within thirty (30) days of the effective date of this franchise ordinance. Provided however that the Company's self-insurance shall provide to the City, its officers, employees and agents, with the same defense as would be provided by an insurance carrier and with substantially the same coverage as required by other users of the Public Right-of-Way in the City. Should Company elect to change the form or basis of insurance during the term of this franchise, Company shall notify the City. Company shall provide documentation necessary for review by the City of the changed circumstances of Company.

SECTION 4. EXTENSIONS FOR RESIDENTIAL CUSTOMERS: At an individual residential customer's request, Company shall be required to extend distribution mains for such customer in any Public Rights-of-Way up to one hundred feet (100') for any one residential customer only if such customer, at a minimum, uses gas for unsupplemented space heating and water heating. Company shall not be required to extend transmission mains in any Public Rights-of-Way within City or to make a tap on any transmission main within City unless Company agrees to such extension or tap by a written agreement between Company and a customer. Upon final approval of the Line Extension Policy filed by TXU Gas in its Tariff for Gas Service, filed as part of its systemwide rate case (Gas Utilities Docket No. 9400), the provisions of Section 4 will terminate and line extensions will be in accordance with the approved Tariff.

SECTION 5. NON-EXCLUSIVE FRANCHISE: The rights, privileges, and franchises granted by this ordinance are not to be considered exclusive, and City hereby expressly reserves the right to grant,

at any time, like privileges, rights, and franchises as it may see fit to any other person, corporation, or any other business entity for the purpose of transporting, delivering, distributing, or selling gas to and for City and the inhabitants thereof.

SECTION 6. PAYMENTS TO CITY:

- A. Company, its successors and assigns, agrees to pay and City agrees to accept, on or before the 1st day of April, 2004, and as set forth in 6. C below of each succeeding year during the life of this franchise the last payment being made on the 1st day of April, 2023, except as stated in 6.C.(2) below, a sum of money which shall be equivalent to four percent (4%) of the Gross Revenues, as defined in 6.B below, received by Company during the preceding calendar year.
- B. "Gross Revenues" shall mean all revenue derived or received, directly or indirectly, by the Company from or in connection with the operation of the System within the corporate limits of the City and including, without limitation:
- (1) all revenues received by the Company from the sale of gas to all classes of customers within the City:
 - (2) all revenues received by the Company from the transportation of gas through the System of Company within the City to customers located within the City; and
 - (3) the value of gas transported by Company for Transport Customers through the System of Company within the City ("Third Party Sales"), with the value of such gas to be reported by each Transport Customer to the Company, provided, however, that should a Transport Customer refuse to furnish Company its gas purchase price, Company shall estimate same by utilizing TXU Gas Distribution's monthly industrial Weighted Average Cost of Gas, as reasonably near the time as the transportation service is performed.
 - (4) "Gross revenues" shall also include:
 - (a) other revenues derived from the following 'miscellaneous charges':
 - i. charges to connect, disconnect, or reconnect gas within the City;
 - ii. charges to handle returned checks from consumers within the City;
 - iii. such other service charges and charges as may, from time to time, be authorized in the rates and charges on file with the City; and
 - iv. contributions in aid of construction ("CIAC");
 - (b) revenues billed but not ultimately collected or received by the Company; and

(c) gross receipts fees;

(5) "Gross revenues" shall not include:

- (a) the revenue of any Person including, without limitation, an affiliate, to the extent that such revenue is also included in Gross Revenues of the Company;
- (b) sales taxes;
- (c) any interest income earned by the Company; and
- (d) all monies received from the lease or sale of real or personal property, provided, however, that this exclusion does not apply to the lease of facilities within the City's right of way.

C. The initial payment for the rights and privileges herein provided shall be for the period January 1, 2004 through December 31, 2004, and each succeeding payment shall be for the calendar year in which the payment is made.

- (1) The franchise fee amounts based on CIAC shall be calculated on an annual calendar year basis, i.e. from January 1 through December 31 of each calendar year.
- (2) The franchise fee amounts that are due based on CIAC shall be paid at least once annually on or before April 30 each year based on the total CIAC recorded during the preceding calendar year.
- (3) Any payments that are received after 5:00 P.M. of the due date constitute late payments. Late payments shall accrue interest from such due date until payment is received by City. Interest shall be calculated in accordance with the interest rate for customer deposits established by the PUC in accordance with Texas Utilities Code Section 183.003 for the time period involved.

It is also expressly agreed that the aforesaid payments shall be in lieu of any and all other and additional occupation taxes, easement, franchise taxes or charges (whether levied as an ad valorem, special, or other character of tax or charge), municipal license, permit, and inspection fees, bonds, street taxes, and street or alley rentals or charges, and all other and additional municipal taxes, charges, levies, fees, and rentals of whatsoever kind and character that City may now impose or hereafter levy and collect from Company or Company's agents, excepting only the usual general or special ad valorem taxes that City is authorized to levy and impose upon real and personal property. If the City does not have the legal power to agree that the payment of the foregoing sums of money shall be in lieu of taxes, licenses, fees, street or alley rentals or charges, easement or franchise taxes or charges aforesaid, then City agrees that it will apply so much of said sums of

money paid as may be necessary to satisfy Company's obligations, if any, to pay any such taxes, licenses, charges, fees, rentals, easement or franchise taxes or charges aforesaid.

D. Effect of Other Municipal Franchise Ordinance Fees Accepted and Paid by Company

- (1) If Company should at any time after the effective date of this Ordinance agree to new municipal franchise ordinance, or renew an existing municipal franchise ordinance, with another municipality, which municipal franchise ordinance determines the franchise fee owed to that municipality for the use of its public rights-of-way in a manner that, if applied to the City, would result in a franchise fee greater than the amount otherwise due City under this Ordinance, then the franchise fee to be paid by Company to City pursuant to this Ordinance shall be increased so that the amount due and to be paid is equal to the amount that would be due and payable to City were the franchise fee provisions of that other franchise ordinance applied to City.
- (2) The provisions of this Subsection D apply only to the amount of the franchise fee to be paid and do not apply to other franchise fee payment provisions, including without limitation the timing of such payments.

E. Company Franchise Fee Recovery Tariff

- (1) Company may file with the City a tariff or tariff amendment(s) to provide for the recovery of the franchise fees under this agreement.
- (2) City agrees that (i) as regulatory authority, it will adopt and approve the ordinance, rates or tariff which provide for 100% recovery of such franchise fees as part of Company's rates; (ii) if the City intervenes in any regulatory proceeding before a federal or state agency in which the recovery of Company's franchise fees is an issue, the City will take an affirmative position supporting 100% recovery of such franchise fees by Company and; (iii) in the event of an appeal of any such regulatory proceeding in which the City has intervened, the City will take an affirmative position in any such appeals in support of the 100% recovery of such franchise fees by Company.
- (3) City agrees that it will take no action, nor cause any other person or entity to take any action, to prohibit the recovery of such franchise fees by Company.

F. Lease of Facilities Within City's Rights-of-Way. Company shall have the right to lease, license or otherwise grant to a party other than Company the use of its facilities within the City's public rights-of-way provided: (i) Company first notifies the City of the name of the lessee, licensee or user; the type of service(s) intended to be provided through the facilities; and the name and telephone number of a contact person associated with such lessee, licensee or user and (ii) Company makes the franchise fee payment due on the revenues from such lease pursuant to Sections 6.A. and 6.B. of this Ordinance. This authority to Lease Facilities within City's Rights-of-Way shall not affect any such lessee, licensee or user's obligation, if any, to pay franchise fees and to obtain consent of the City

to use the Public Rights-of-Way by franchise or as otherwise may be required by law.

- G. Company agrees that on the same date that payments are made, as provided in this Section 6, it will file with the City Secretary a report showing the gross revenues as defined in this Section 6 received by the Company during the calendar quarter or year, as applicable, upon which the payment is based in sufficient detail to reasonably verify payments. City may, if it sees fit, have the books and records of Company examined by a representative of City to ascertain the correctness of the reports agreed to be filed herein, and Company shall fully cooperate in making available its records and otherwise assisting in these activities. Should any payment due date required by this franchise fall on a weekend or declared bank holiday, payment shall be delivered to the City no later than the close of business of the last working day prior to any specifically required due date contained within this franchise.

SECTION 7. ACCEPTANCE OF FRANCHISE: In order to accept this franchise, Company must file with the City Secretary its written acceptance of this franchise ordinance within sixty (60) days after its final passage and approval by City. If such written acceptance of this franchise ordinance is not filed by Company, this franchise ordinance shall be rendered null and void.

When this franchise ordinance becomes effective, all previous ordinances of City granting franchises for gas delivery purposes that were held by Company shall be automatically canceled and annulled, and shall be of no further force and effect; provided, however, that any claim, action or complaint which prior to such effective date has been initiated or has arisen under or pursuant to any such previous ordinance shall continue to be governed by the provisions of that ordinance and for that purpose the previous ordinance shall be deemed to remain and shall continue in full force and effect.

SECTION 8. CHANGING BOUNDARIES OF CITY. After written notification by the City to Company of an approved annexation, the Company will initiate actions to reclassify affected customers into the City limits in a timely manner.

SECTION 9. PLANNING AND COMMUNICATION. Representatives of the Company and the City shall meet periodically to discuss long term planning for capital improvement projects contemplated by each. Upon the City's or Company's reasonable request, the Company and City shall meet to share information regarding the Company's operations and activities under this franchise.

SECTION 10. NOTICES. Any notices required or desired to be given from one party to the other party to this ordinance shall be in writing and shall be given and shall be deemed to have been served and received if (i) delivered in person to the address set forth below; (ii) deposited in an official depository under the regular care and custody of the United States Postal Service located within the confines of the United States of America, proper postage prepaid, and sent by certified mail, return receipt requested, and addressed to such party at the address hereinafter specified; or (iii) delivered to such party by courier receipted delivery. Either party may designate another address within the confines of the continental United States of America for notice, but until written notice of such change is actually received by the other party, the last address of such party designated for notice shall remain such party's address for notice.

CITY

COMPANY

If by hand delivery:

City Manager
Town of Addison
5300 Belt Line Road
Addison, Texas 75240-7606

Manager
TXU Gas Distribution

If by mail:

Town of Addison, Texas
P.O. Box 9010
Addison, Texas 75001

SECTION 11. COMPLIANCE, REMEDIES AND TERMINATION: The City shall notify the Company, in writing, of an alleged failure to comply with a material provision of this Ordinance, which notice shall specify the alleged failure with reasonable particularity. The Company shall, upon its receipt of such notice, either:

- (i) diligently cure such failure, but in any event within not more than thirty (30) days after such receipt; or
- (ii) if such failure cannot with due diligence be cured within the said thirty (30) day period, then cure such failure within an additional reasonable period of time so long as the Company has submitted to the City in writing its plan (including, without limitation, the time period) to cure such failure and has commenced curative action within the said thirty (30) day period, and thereafter is diligently attempting to cure the failure; or
- (iii) if the Company reasonably believes that the failure specified in the notice from the City is not a failure of a material provision of this Ordinance, submit to the City within ten (10) days after its receipt of the notice the Company's written response specifying facts and presenting arguments in refutation or defense of such alleged failure (the "Company's Defense").

In the event that the Company does not comply with subparagraphs (i), (ii), or (iii) above, or if the Company does comply with subparagraph (iii) above but the City, after its review of the Company's Defense, nevertheless believes that the Company has failed to comply with a material provision of this Ordinance, the City shall be entitled to compel compliance by suit in any court of competent jurisdiction and seek such other remedies as may be available to the City, and if, upon final judgment, not subject to further appeal, being entered in favor of the City, the Company remains in default of any material provision of this Ordinance or the final judgment, the City may declare this Ordinance to be terminated.

SECTION 13. PARAGRAPH HEADINGS. CONSTRUCTION: The paragraph headings contained in this ordinance are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both parties have participated in the preparation of this ordinance and this ordinance shall not be construed either more or less strongly against or for either party.

SECTION 14. ASSIGNMENT. Prior to assignment, transfer, pledge or other conveyance of its rights, duties and obligations under this franchise, except to an affiliated entity, Company shall obtain prior written consent of the governing body of the City, which consent will not be unreasonably withheld or delayed. For purposes hereof, an "affiliated entity" means Company's corporate parent owning more than 50% of the shares of Company, a partnership or joint venture in which Company owns a controlling interest of more than 50%, or a subsidiary entity of Company in which Company owns a controlling interest of more than 50%. Company shall provide notice of any assignment, transfer, pledge or conveyance to an affiliated entity at the same time it provides written notice to the Texas Railroad Commission. Any assignment, transfer, pledge or other conveyance, whether to an affiliated entity or otherwise, shall require the assignee or transferee to perform all of the terms and conditions of this franchise.

SECTION 15. COMPLIANCE WITH CITY CHARTER. Company recognizes, accepts and agrees that the terms, conditions and provisions of this Franchise are subject to the applicable provisions of the City Charter. Any request by Company for a modification to this Franchise shall be subject to a review by the City Attorney for compliance with the applicable provisions of the City Charter.

SECTION 16. THIRD PARTIES. Nothing contained in this franchise shall be construed to provide rights to third parties.

SECTION 17. SEVERABILITY. This Ordinance, and every provision hereof, shall be considered severable, and the invalidity or unconstitutionality of any section, clause, provision or portion of this Ordinance shall not affect the validity or constitutionality of any other portion of this Ordinance.

SECTION 18. EFFECTIVE DATE: If Company accepts this ordinance, by the filing of its written acceptance with the City Secretary, this ordinance shall become effective on date of final passage. If written acceptance of this franchise ordinance is not filed by Company after its final passage and approval by said City within sixty (60) days, the franchise ordinance shall be rendered null and void.

PASSED AND APPROVED on this the _____ day of _____, 2003.

ATTEST:

City Secretary

Mayor
Town of Addison, Texas

STATE OF TEXAS §
COUNTY OF DALLAS §
TOWN OF ADDISON §

I, _____, City Secretary of the Town of Addison, Dallas County, Texas, do hereby certify that the above and foregoing is a true and correct copy of an ordinance passed by the City Council of the City of Addison, Texas, at a _____ session, held on the _____ day of _____, 2003, as it appears of record in the Minutes in Book _____, page _____.

WITNESS MY HAND AND SEAL OF SAID CITY, this the ____ day of _____, A. D. 2003.

City Secretary
Town of Addison, Texas

Council Agenda Item: #R6

SUMMARY:

This item is for the award of contracts for employee medical and dental insurance for the year beginning January 1, 2004 and ending December 31, 2004.

FINANCIAL IMPACT:

Budgeted Amount: \$1,585,581.40

Cost: \$1,753,567.68

The Town's cost is 10.5% over the amount budgeted.

BACKGROUND:

The Town contracted with Gary Daigle to conduct an independent study of the employee benefit plan for group medical and dental insurance coverage. This study included a review of the current plans with CIGNA Healthcare and Delta Dental Insurance Company, development of a Request for Proposal (RFP) and review of the alternate proposals received in response to the RFP.

The carrier who best met the bid specifications and provided competitive bidding for medical coverage, using their HMO and PPO plans of benefits, was Blue Cross/Blue Shield of Texas.

Delta Dental Insurance Company, the current carrier of the Town's dental plan, provided the most competitive bidding for dental coverage with a rate increase of 3% over the 2003 plan.

RECOMMENDATION:

Staff recommends that Council authorize the City Manager to enter into contracts with Blue Cross/Blue Shield of Texas in the amount of \$1,615,789.92 for employee medical insurance and with Delta Dental Insurance Company in the amount of \$137,777.76 for employee dental insurance for the year 2004.

SUMMARY

Participating Carriers

Medical

CIGNA (Current)
Blue Cross/Blue Shield of Texas
Aetna
United HealthCare
Humana
Texas Municipal League (TPA)
ICON (TPA)

Dental

Delta (Current)
SafeGuard
QCD
Aetna
United HealthCare
Humana
Icon and TML (Did not offer as a standalone dental plan)

A “renewal only” bid was received from the current carrier, CIGNA.

All bids were received by bid deadline in the Town of Addison’s Purchasing Department.

Additional contact was made with the carrier’s to clarify various provisions of their bid.

All rate proposals are subject to final underwriting and could change based on the information disclosed at time of final underwriting decision. Each carrier has based its decision on the submitted assumptions. They retain the right to modify their response if the information upon which their response is based is changed or is supplemented.

When comparing multiple carriers and multiple plans of benefits some variations will occur between the carriers and must be taken into account when evaluating plans. Overall cost saving to the town’s plan played a significant role when reviewing plans without a reduction in benefits and provider accessibility. Some change in benefit levels may be necessary to both the HMO and PPO plans in order to achieve desired results. A cost, which has been estimated to be between 2% to 3% of the premium, should be taken into account as the “hidden” cost of changing from one insurance provider to the next.

Historically the town has always provided its employees and their families with the highest quality in insurance carrier, benefit design and network accessibility. Those standards have not been compromised in this evaluation.

Medical

CIGNA- The current provider submitted renewal documentation of the HMO and PPO plans along with alternate plan designs. They did not submit a response to the RFP. The alternative plans that were given included multiple variations in the POS co-pays and deductibles. Also included was a Preferred Provider Organization (PPO) plan as a renewal option. The addition of this type of plan could allow for greater access of providers at a lower rate. All three plans (HMO, POS, PPO) were reviewed and compared to the other submissions.

Aetna- This carrier did not meet the bid specifications (retirees were not included), but, provided a competitive bid by using their HMO and PPO plans of benefits. Aetna had to re-submit their bid with the retirees included in the plan. With the addition of the retirees and additional benefit changes the Aetna rate became less competitive when reviewing the other submitting carriers. Also the PPO and HMO networks are not as comprehensive, in my opinion, as the other submitting carriers. Because of this, I do not recommend consideration of this bid.

Blue Cross/Blue Shield of Texas- This carrier met the bid specifications and provided a competitive bid using their HMO and PPO plans of benefits. Some benefit differences occur when comparing to the current plan of benefits but their overall plan design included some enhancements to the current plan and warrants further consideration. A meeting was arranged with the sales representatives and the town's staff to review their proposal and ask questions of the plan, carrier and service. During the meeting an alternate plan design was agreed to and the Blue Cross representatives provided us with an alternate rate and benefit designed to fit within the town's budget. This was accomplished by increasing some co-pays and deductibles. Overall reaction from the meeting was very positive and it was agreed to consider this carrier further. The Blue Cross plan meets the town's requirements and I feel will enhance the town's benefit package. Therefore I recommend Blue Cross as the carrier and the benefit plan that best fits the town's needs at this time.

TML- This carrier provided a PPO only plan of benefits and rates were uncompetitive. I do not recommend any further action with this plan.

United HealthCare- This carrier provided a PPO only quote. The rate structure is very competitive, but, at a significant difference in benefit levels. Due to the fact that there is such a change in benefits, I do not recommend any further action with this plan.

Humana- This carrier provided a PPO only quote. The rates structure for this plan is not as competitive as the previous carriers. I do not recommend any further action with this plan.

ICON- This third party administered (TPA) plan of benefits did meet the bid specifications and duplicated on a self-funded basis the HMO and PPO benefit levels. Self-funding a plan involves Specific and Aggregate insurance, insured by Trustmark Insurance Company. In order to compare a self-funded plan you must consider expected claims and fixed expenses as the minimum cost liability to the city. The maximum liability is what is also shown in the proposal. Using this as a basis for comparison this

plan did not compare favorably to the plans the fully insured maximum liability. I do not recommend any further action with this plan.

Dental

DELTA-As the current carrier of the cities dental plan, they provided a renewal proposal that included an approximate 3% rate increase for the next year. The new rates for 2004 are illustrated on the enclosed spread sheet with no change in benefit levels. This is the first rate increase in 2 years that Delta has implemented. Dental trend dictates that an increase in 2002 rates should have been a minimum of 5.7% and 7.3% in 2003. According to the town's staff, employees have reported a general satisfaction in the benefits and providers from Delta Dental. I recommend that there be no change in the dental plan at this time

SafeGuard- This is a similar plan of benefits but would require a change in providers from the current plan. This carrier did meet the bid specifications and did provide a competitive rate structure. However I do not recommend a change to this plan at this time.

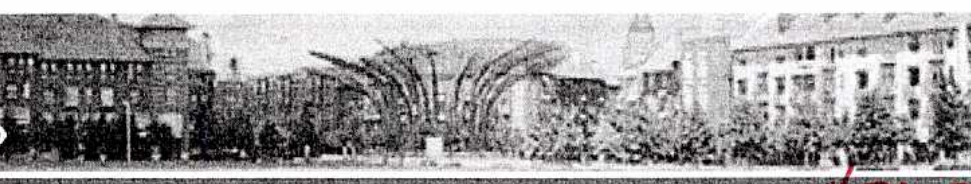
Aetna- This carrier met the specifications as outlined in the bid and provides a competitive rate structure. This plan does require a change in network providers and a change in benefit levels. I do not recommend that we change to this plan.

ICON and TML- A standalone dental plan was not offered with their proposal.

United HealthCare-This plan was non-competitive and therefore no further action is required at this time.

QDC-This is a similar plan of benefits as the current but would require a change in providers. Therefore I do not recommend a change to this plan at this time.

Humana- This plan was non-competitive and therefore no further action is required at this time.



#R6-2

Rate Comparison For: Town of Addison

Current Rates CIGNA Blue Cross/Blue Shield

HMO	Current Monthly	EE Mo.	New Monthly	EE Mo.
Employee	\$259.94	\$0.00	\$311.93	\$0.00
Employee and Spouse	\$691.48	\$215.77	\$829.78	\$258.93
Employee and Child(ren)	\$525.09	\$132.58	\$630.11	\$159.09
Employee and Family	\$863.02	\$301.54	\$1,035.62	\$361.85

POS/PPO	Current Monthly	EE Mo.	New Monthly	EE Mo
Employee	\$344.39	\$0.00	\$390.84	\$0.00
Employee and Spouse	\$928.91	\$292.26	\$1,039.69	\$324.43
Employee and Child(ren)	\$705.39	\$180.50	\$789.51	\$199.34
Employee and Family	\$1,159.37	\$407.49	\$1,297.61	\$453.39

Dental	Current Monthly	EE Mo.	New Monthly	EE Mo
Employee	\$30.59	\$0.00	\$31.51	\$0.00
Employee and Spouse	\$59.41	\$14.41	\$61.19	\$14.84
Employee and Child(ren)	\$65.66	\$17.54	\$67.73	\$18.11
Employee and Family	\$105.99	\$37.30	\$109.17	\$38.83

Additional Monthly Cost to the Employee (over their current premium).

	HMO Monthly	PPO Monthly	Dental
Employee	\$0.00	\$0.00	\$0.00
Employee and Spouse	\$43.16	\$32.17	\$1.78
Employee and Child(ren)	\$26.51	\$18.84	\$2.07
Employee and Family	\$60.31	\$45.90	\$3.18

Total Monthly Cost to the Town of Addison

	HMO Monthly	PPO Monthly	Dental	Total Monthly
Employee	\$14,660.71	\$29,703.84	\$3,371.57	\$47,736.12
Employee and Spouse	\$10,275.30	\$ 9,298.38	\$1,900.35	\$21,474.03
Employee and Child(ren)	\$10,362.44	\$ 9,442.72	\$1,637.46	\$21,442.62
Employee and Family	\$35,709.81	\$15,195.96	\$4,572.10	\$55,477.87
Total Monthly				\$146,130.64

(Est. Last Years Cost to the Town, Monthly.....\$126,701.28)

Premium Increase from CIGNA to Blue Cross/Blue Shield (Approx)

Average increase for the plan for Medical: 16%, Dental: 3%

HMO 20%

PPO 12%

#R6-3

SERVICES THAT ARE *NOT* COVERED**PRINCIPAL BENEFITS AND COVERED SERVICES***

	In-Network	Out-of-Network
WHO'S COVERED	Primary enrollee and spouse as well as dependent children to age 25	Primary enrollee and spouse as well as dependent children to age 25
DEDUCTIBLES AND BENEFITS MAXIMUM	The deductible \$50 per person, \$150 per family, per calendar year. The maximum benefit paid per plan year is \$1,500 per person	The deductible \$50 per person, \$150 per family, per calendar year. The maximum benefit paid per plan year is \$1,500 per person
DIAGNOSTIC AND PREVENTIVE BENEFITS* -- oral examinations, cleanings, x-rays, fluoride treatment, space maintainers	100% of Access fee schedule (no deductible applies to these services)	100% of UCR (Usual, Customary and Reasonable) (no deductible applies to these services)
BASIC BENEFITS* -- simple extractions, fillings, denture repairs, sealants, endodontics (root canals), periodontics (gum treatment)	80% of Access fee schedule	80% of UCR (Usual, Customary and Reasonable)
CROWNS, JACKETS AND CAST RESTORATIONS* -- for treatment of carious lesions (visible destruction of hard tooth structure resulting from dental decay) which cannot be restored with amalgam, synthetic or plastic	50% of Access fee schedule	50% of UCR (Usual, Customary and Reasonable)
PROSTHODONTIC BENEFITS* -- bridges, partial dentures, full dentures	50% of Access fee schedule	50% of UCR (Usual, Customary and Reasonable)
ORTHODONTIC BENEFITS* -- [for dependent children only to age 25]	50% of Access fee schedule Lifetime maximum is \$1,500 per [dependent child] enrollee.	50% of UCR (Usual, Customary and Reasonable) Lifetime maximum is \$1,500 per [dependent child] enrollee.

**Please refer to your Evidence of Coverage for limitations on these benefits. Some examples of limitations on services are the number of cleanings and oral exams covered in a calendar year, and time limitations on filling and crown replacements. All services are subject to calendar year maximums.*

Although your program covers many of the most commonly needed services, some services are not covered. If you are unsure whether a particular procedure is covered, or how much of it is paid for by your program, check with Delta before proceeding.

The following are not covered by the program:

- Services for injuries or conditions covered under Workers' Compensation or Employer's Liability Laws
- Cosmetic surgery or dentistry or services to correct congenital malformation
- Experimental procedures
- Therapeutic drugs, premedication or pain relievers
- Hospital costs or extra charges for hospital treatment
- Anesthesia (except for general anesthesia for oral surgery)
- Extra-oral grafts, implants and implant removal
- Teeth extracted prior to effective date are not a covered benefit

The preceding information is not intended for use as a summary plan description, nor is it designed to serve as an Evidence of Coverage for the program.

This program is administered by Delta Dental Insurance Company. If you have specific questions regarding benefit structure, limitations or exclusions, consult the Evidence of Coverage or contact Delta's Customer Services department.



Delta Dental Insurance Company

Delta Dental Insurance Company
P.O. Box 1809
Alpharetta, GA 30023-1809

1-800-521-2651

Access Delta Dental's National
Dentist Directory on the Internet.

Our Internet address is: www.deltadentalins.com

Blue Cross and Blue Shield of Texas Summary of Benefits

PPO

GENERAL PROVISIONS	TYPE OF SERVICE	NETWORK	OUT-OF-NETWORK
Calendar Year Deductible (Applies to Non-Inpatient Hospital Services) 4 th Quarter Carryover Applies Deductible Credit from Prior Carrier Coinsurance Stoploss Maximum Coinsurance Stoploss Credit from Prior Carrier		\$500 Individual/\$1000 Family Yes Yes \$1000 Indiv/\$3000 Family per cal. yr. Yes <i>Network deductible and coinsurance will only apply toward Network deductible and coinsurance</i>	\$1000 Individual/\$2000 Family Yes Yes \$3000 Indiv/\$9000 Family per cal. yr. Yes <i>Out-of-Network deductible and coinsurance will also apply toward Network deductible and coinsurance</i>
Lifetime Maximum per Participant		\$1,000,000	
INPATIENT HOSPITAL SERVICES (must be precertified) Per Admission Deductible Penalty for Failure to Precertify		90% None None	70% after per adm. deductible \$250 \$250
EMERGENCY ROOM/TREATMENT ROOM Accident & Medical Emergency Situation within 48 Hours Facility Charges Physician Charges Non-Emergency Situations Facility Charges Physician Charges		90% after \$50 copay, waived if admitted 90% after cal. yr. Deductible	
MEDICAL-SURGICAL SERVICES Services Performed in Physician Office (non-surgical), Including Lab & X-ray (excluding Certain Diagnostic Procedures) Immunizations (birth to the day of the 6 th birthdate) Physician Surgical Services in any Setting Lab & X-Ray in Other Outpatient Facilities (excluding Certain Diagnostic Procedures): • Certain Diagnostic Procedures: Bone Scan, Cardiac Stress Test, CT Scan (with or Without contrast), Ultrasound, MRI, Myelogram, PET Scan Home Infusion Therapy (must be precertified) In-Vitro Fertilization Physical Medicine Services (Physical, Occupational, and Manipulative Therapy)		90% after \$50 copay, waived if admitted 90% after cal. yr. deductible 100% after \$15 copay per visit 100% 90% after cal. yr. deductible 100% 90% after cal. yr. deductible 90% after cal. yr. deductible 90% after cal. yr. deductible Declined \$1,500 cal. yr. max.	70% after \$50 copay & cal. yr. deductible, waived if admitted 70% after cal. yr. deductible 70% after cal. yr. deductible 100% 70% after cal. yr. deductible 70% after cal. yr. deductible 70% after cal. yr. deductible 70% after cal. yr. deductible 70% after cal. yr. deductible
Speech and Hearing Services with Hearing Aids		Covered as any other sickness \$1,000 maximum benefit per 36-month period for Hearing Aids	Covered as any other sickness

PPO

TYPE OF SERVICE		NETWORK	OUT-OF-NETWORK
PREVENTIVE CARE Routine Physicals, Well Baby Care, Immunizations (after 6 th birthdate), Vision & Hearing Exams		100% after \$15 copay per visit	70% after cal. yr. deductible
		100% \$10,000	70% after cal. yr. deductible \$7,000
EXTENDED CARE SERVICES (must be precertified) Home Health Care Calendar Year Maximum		90% 90% after cal. yr. deductible 30 inpatient days/30 physician visits <i>Days and Visits used in Network or Out-of-Network apply towards satisfying both maximums.</i>	70% after per adm. deductible 70% after cal. yr. deductible 15 inpatient days/15 physician visits
MENTAL HEALTH (must be precertified) Inpatient Services Hospital Services (Facility) Physician Services Calendar Year Limitations		100% after \$15 copay 90% after \$50 copay, waived if admitted 90% after cal. yr. deductible 30 visits per cal. yr.	70% after cal. yr. deductible 70% after \$50 copay & cal. yr. deductible, waived if admitted 70% after cal. yr. deductible
Outpatient Services Office Visit/Consultation Emergency Room/Treatment Room Facility Charges Professional Provider/Facility Visits Allowed		Three separate series of treatments for each covered individual/Covered as any other sickness Covered as any other sickness	
CHEMICAL DEPENDENCY in a Substance Abuse Facility (must be precertified) All Other Outpatient Treatment		90% 90% after cal. yr. deductible 45 inpatient days/45 physician visits	70% after per adm. deductible 70% after cal. yr. deductible
SERIOUS MENTAL ILLNESS (must be precertified) Inpatient Services Hospital Services (Facility) Physician Services Calendar Year Limitations		100% after \$15 copay 90% after \$50 copay, waived if admitted 90% after cal. yr. deductible 60 visits per cal. yr.	70% after cal. yr. deductible 70% after \$50 copay & cal. yr. deductible, waived if admitted 70% after cal. yr. deductible
Outpatient Services Office Visit/Consultation Emergency Room/Treatment Room Facility Charges Professional Provider/Facility Number of Outpatient Visits			

TYPE OF SERVICE	PARTICIPATING PHARMACY	NON-PARTICIPATING PHARMACY (member files claim)
PRESCRIPTION DRUG PROGRAM (all copays are per 30-day supply and will not apply to coinsurance stoploss maximum) Non-Preferred Brand Name Preferred Brand Name Generic <i>Members electing to purchase preferred brand name drugs when "Dispense as Written" (DAW) is not indicated and a generic equivalent is available, will be required to pay the difference between the cost of the generic and preferred brand name drug, plus the preferred brand name copay.</i> Mail Service Prescription (all copays are per 30-day supply and will not apply to coinsurance stoploss maximum) Non-Preferred Brand Name Preferred Brand Name Generic	\$40 copay \$25 copay when no generic is available or prescribed "Dispense as Written" (DAW) \$10 copay	80% up to Average Wholesale Price minus copay 80% up to Average Wholesale Price minus copay 80% up to Average Wholesale Price minus copay
	Yes	
	\$40 copay \$25 copay when no generic is available or prescribed "Dispense as Written" (DAW) \$10 copay	

EMPLOYEE INFORMATION

- This is a general Summary of your benefit design. Please refer to your benefit booklet for other details and for limitations and exclusions.
- The following benefits apply to dependent coverage:
 - Dependent children covered for maternity benefits.
 - Dependent children are covered to age 25. Disabled dependent children can be covered beyond age 25.
 - Automatic coverage for newborns for the first 31 days following birth. Infants not enrolled for coverage within the first 31 days after birth will not be eligible for coverage until the following open enrollment period or special enrollment event.
- Provider charges are paid according to BCBSTX determined Allowable Amount and negotiated prices.
- Preexisting conditions are defined in the benefit booklet and are excluded for 12 months. Appropriate credit will be given for time served under another health benefit plan as defined under the law.
- Replacement of Medical Coverage: In compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and Texas State law, the following provisions apply to each eligible participant who has health coverage under the employer's plan immediately prior to the effective date of the health contract between the employer and BCBSTX (the contract date):
 - Benefits for eligible expenses incurred for any service or supplies prior to the contract date, are not covered under the contract.
 - Eligible expenses for services or supplies incurred on or after the effective date will be considered for benefits subject to all applicable contract provisions.

HMO BLUE® TEXAS SUMMARY OF BENEFITS

PHYSICIAN SERVICES	
Office Visits	\$15 copay per visit
Home Visits	\$15 copay per visit
Hospital Visits	100% coverage
PREVENTIVE SERVICES	
Periodic Health Assessments (age 18 and over)	\$15 copay per visit
Childhood Immunizations (birth to age 6)	100% coverage
Immunizations for all Members (age 6 and over)	100% coverage
Well Child Care (through age 17)	100% coverage
Annual Well Woman Examination	100% coverage
ALLERGY CARE SERVICES	
Testing and Evaluations	50% copay
Injections and Serum	50% copay
PREGNANCY and FAMILY PLANNING SERVICES	
Outpatient Diagnostic Counseling, Consultations and Planning Services	\$15 copay per visit
Prenatal and Postnatal Visits	100% coverage after \$15 copay for 1 st visit
Delivery in Hospital	100% coverage after \$275 copay
Newborn Care in Hospital	100% coverage
OUTPATIENT HOSPITAL SERVICES	
Outpatient Surgery (including all related surgical services)	\$100 copay
Lab & X-rays, Radiation, Chemotherapy, Dialysis	100% coverage
Rehabilitation Services and Therapy	\$15 copay per visit
INPATIENT HOSPITAL SERVICES	
Inpatient Care (semiprivate room & board, medications, surgery, lab & x-ray, anesthesia and therapy)	100% coverage after \$275 copay
EMERGENCY MEDICAL SERVICES	
Emergency Room Services (includes out-of-area)	\$75 copay per visit (waived if admitted)
Urgent Care Center	\$30 copay per visit
Physician Services	100% coverage
Ambulance Services	\$100 copay per service
BEHAVIORAL HEALTH SERVICES	
Outpatient Visits	\$25 copay per visit (20 visits per calendar year)
Inpatient Hospital Days	Coverage provided with purchase of Rider
Serious Mental Illness	
- Outpatient	\$15 copay per visit
- Inpatient	100% coverage after \$275 copay
Chemical Dependency (covered as any physical illness)	Subject to inpatient/outpatient copays (limited to 3 separate series of treatments per lifetime)
SKILLED NURSING, HOME HEALTH & HOSPICE SERVICES	
Skilled Nursing Facility	\$25 copay per day (60 days per calendar year)
Home Health Care by Physician	\$15 copay per visit
Hospice	100% coverage (calendar year maximum of \$20,000)
Custodial Care	Not covered
OTHER SERVICES	
Diabetic Self-Management Training	100% coverage
Diabetic Equipment	20% copay
Diabetic Supplies	\$15 copay
Durable Medical Equipment	Coverage provided with purchase of Rider
Prosthetic & Orthotic Devices (when medically necessary for conditions commencing after the effective date of coverage)	20% copay (\$10,000 limit on replacements except those due to maturation)
ANNUAL MAXIMUM OUT-OF-POCKET	
per year – per person	\$1,000
per year – per family	\$2,000
LIFETIME MAXIMUM	
	Unlimited

PERCENTAGES SHOWN ARE PERCENTS OF THE HMO BLUE/HMO BLUE TEXAS ALLOWABLE AMOUNT. REFER TO THE CERTIFICATE OF COVERAGE FOR SPECIFIC PROVISIONS AND LIMITATIONS. INFORMATION ON ADDITIONAL BENEFITS MAY BE ATTACHED.

Blue Cross and Blue Shield of Texas, a Division of Health Care Service Corporation, a Mutual Legal Reserve Company*

HMO plans offered by Southwest Texas HMO, Inc.* d/b/a HMO Blue Texas

*Independent Licensees of the Blue Cross and Blue Shield Association

Council Agenda Item: #R7

SUMMARY:

This item is for the award of contracts for employee life and accidental death and dismemberment insurance and for long term disability insurance for the year beginning January 1, 2004 and ending December 31, 2004.

FINANCIAL IMPACT:

Budgeted Amount: \$117,838.60

Cost: \$117,838.60

BACKGROUND:

The Town currently contracts with Hartford Life Insurance Company for employee life and accidental death and dismemberment insurance and with UnumProvident for employee long term disability insurance. Both companies will continue their contracts with no increase in premium costs.

RECOMMENDATION:

Staff recommends that Council authorize the City Manager to enter into contracts with Hartford Life Insurance Company in the amount of \$68,000 for life and accidental death and dismemberment insurance and with UnumProvident in the amount of \$49,838.60 for long term disability insurance for the year 2004.

Council Agenda Item: #R8

SUMMARY:

This item is for the approval of an amendment to the Professional Services Agreement with URS Corporation, in the amount of \$49,470.00, for the design of the Arapaho Road Bridge at Midway Road.

FINANCIAL IMPACT:

Budgeted Amount:	Not specifically budgeted
Cost:	\$49,470.00 (Engineering)
Source of Funds:	Funds are available from the FY 2004 General Obligation Bond Program.

BACKGROUND:

The third phase of the proposed Arapaho Road extension project extends from Surveyor Blvd. to Addison Road. Construction of this section of Arapaho Road will complete an east-west minor arterial roadway that is necessary to relieve traffic congestion on Belt Line Road. It is anticipated that the new street will initially absorb approximately 11,000 vehicles per day, with a maximum future count of 25,000 vehicles per day. A proposed bridge over Midway Road is also proposed as an integral component of the roadway section in the third phase. The firm of URS Corporation was selected by the Town's Bridge Selection Committee to perform the design of this bridge. A Professional Services Agreement was approved in September 2002, in the amount of \$550,965.00, for design services related to the construction of the proposed Midway Road Bridge. The anticipated construction cost of the bridge is approximately \$4,600,000. URS's scope of work is as follows:

- a. Bridge Design, including Civil & Electrical
- b. Architectural Design
- c. Lighting Design
- d. Noise Study, including Modeling & Analyses
- e. Project Management

However, the design features for the bridge have changed due to review and evaluation by Council, staff, and Dallas Water Utilities. These changes include revised layout and structural design of the bridge, traffic railings, re-initiating the structural “stingers” onto the arch sections, developing color and mounting alternatives for lighting the arch, and participating in additional project meeting with various entities. **These additional project features resulted in the Engineer’s request for a contract amendment (shown as Change Order No. 03 in the attachment), in the amount not to exceed \$49,470.00.** Change Order No. 1, in the amount of \$18,715.00, was previously approved and consisted of development of a bridge noise and vibration analysis that was used in testimony for two different condemnation cases. Change Order No 2, in the amount of \$23,410.00, was also previously approved and consisted of conceptual bridge layout and typical section modifications. In addition, it included preparation and presentations at numerous Dallas Water Utilities meetings and discussions, pertaining to the bridge alignment in relation to the existing 60” water transmission main.

The design of the proposed bridge by URS Corporation shall be performed concurrently with the design efforts on the roadway by HNTB Corporation.

RECOMMENDATION:

It is recommended that Council authorize the City Manager to enter into a contract amendment with URS Corporation, in the amount not to exceed \$49,470.00, for Professional Services associated with the design of the Arapaho Road Bridge at Midway Road.

CHANGE ORDER NO. 03

In accordance with the Agreement between the Town of Addison ("Client"), and URS Corporation ("URS"), a Nevada corporation dated November 11, 2002 (for Work Order No. 001) this Change Order describes the agreed upon changes to the Services, Schedule, and Payment for the Services.

Project: Arapaho Road Bridge at Midway Road URS Project No.25334401 Date: _____

REFERENCE: Drawing No. N/A Specification No. N/A Other N/A

The Agreement is hereby changed as follows:

See Attachment K, "ADDITIONAL SCOPE OF SERVICES"

Justification for Change:

The need for additional unforeseen coordination with the Addison Town Council and subsequent requested modifications to the bridge renderings, lighting, traffic rail and layout plans.

CHANGE TO ESTIMATED CONTRACT PRICE (See Attachment L)

Original Estimated Contract Price:	\$ 550,965.00
Current estimated contract price, including previous change orders:	\$ 593,090.00
The estimated Contract Price due to this Change Order will be increased by:	\$ 49,470.00
The new estimated Contract Price due to this Change Order will be:	\$ 642,560.00

CHANGE TO THE ESTIMATED SCHEDULE (See Attachment M)

The Contract Time will be increased by 151 calendar days.
The date for completion of all work under the contract will be: June 30, 2004

EXCEPT AS PROVIDED IN THIS CHANGE ORDER, ALL TERMS AND CONDITIONS OF THE CONTRACT REMAIN UNCHANGED

Acceptance of the terms of this Change Order is acknowledged by the following signatures of the Authorized Representatives.


CLIENT

Signature
Ron Whitehead, City Manager
~~Michael E. Murphy, PE, Director of Public Works~~
Typed Name/Title

Date of Signature

cc: Accounting

URS


Signature

Emily Taylor, P.E. / Vice President
Typed Name/Title

11/03/03
Date of Signature

**ARAPAHO ROAD BRIDGE AT MIDWAY ROAD
CHANGE ORDER NO. 03 to WORK ORDER NO. 001**

**ATTACHMENT K
ADDITIONAL SCOPE OF SERVICES**

**ADDITIONAL DESIGN DEVELOPMENT AND CONTRACT
DOCUMENTS FOR THE ARAPAHO ROAD BRIDGE**

In addition to the design services provided for in the original Scope of Services and Change Orders No. 1 & 2, URS will provide conceptual design development, preliminary and final engineering and modifications to the plans, as it relates to Arapaho Road from approximate Station 40+67 to approximate Station 70+28 to incorporate the following changes and as listed below in the Additional Itemized Scope of Services. These changes as presented to the Town Council on August 26, 2003 include developing a colored lighting concept for the arch, adding the “stingers” on to the structure and revising the rail to a more open traffic rail. URS shall modify the preliminary bridge design, bridge layouts and typical sections as necessary, attend additional meetings with the Town of Addison, prepare an additional presentation to the Town Council and prepare a lighting mock-up for the Town to see the colored lighting on the blue structure.

Changes to Itemized Scope of Services Provided by URS For the Arapaho Road Bridge

TASK I - ENGINEERING

B. Bridges

1. Preliminary Bridge Design (~30% submittal)
 - Revise Preliminary Bridge Layout (Finalize Bridge Location)
 - Revise Preliminary Typical Section
 - Refine Arch Shape
 - Re-size Diaphragms
 - Revise Traffic Railing Members
 - Develop Stingers
 - Revise Quantities and Cost Estimate
2. Final Bridge Design, & PS&E (65%, 95%, 100% submittals)
 - Prestressed Concrete Beam Unit – Add Deck Plan for Widened Deck
 - Bridge Stinger Details
 - Additional coordination with Town

TASK II - ARCHITECTURAL

A. Design Development

1. Architectural Studies & Details
 - Develop revised rail option and the architectural options to realize the triangular pattern in the rail.
 - Develop bridge mounted “stingers”
 - Attend Additional Meetings with the Town and the Town Council.

TASK III – LIGHTING DESIGN

A. Design Development (includes one meeting in Addison)

1. Develop color alternative for lighting of arch.
2. Develop mounting concepts for bridge structure lighting and stingers.
3. Prepare a mock-up of potential color changing effects on existing Addison Circle sculpture.
3. Present final lighting design development to the Town Council.

TASK V - PROJECT MANAGEMENT

B. Coordination

1. Prepare for and Attend Town Council or other Town Meetings (1 total).
2. Prepare for and attend project meetings with Addison Public Works (2 total)

**ARAPAHO ROAD BRIDGE AT MIDWAY ROAD
CHANGE ORDER NO. 03 TO WORK ORDER NO. 001**

ATTACHMENT L

**ADDITIONAL FIXED PRICE FEE BREAKDOWN
URS CORPORATION**

Total Cost

TASK I – Engineering

B. Bridges

\$ 23,830.00

1. Preliminary Bridge Design
2. Final Bridge Design, PS&E

TASK II – Architecture (Corgan)

A. Design Development

\$ 10,280.00

TASK III – Lighting Design (Brandston)

A. Design Development

\$ 14,280.00

TASK V – Project Management

B. Preparation & Attendance of Meetings W/ Addison

\$ 1,080.00

TOTAL

\$ 49,470.00

ARAPAHO ROAD BRIDGE AT MIDWAY ROAD
CHANGE ORDER NO. 03 - ARAPAHO ROAD BRIDGE
MAN-HOUR & EXPENSE COST ESTIMATE
URS CORPORATION

ATTACHMENT L

CONSULTANT:

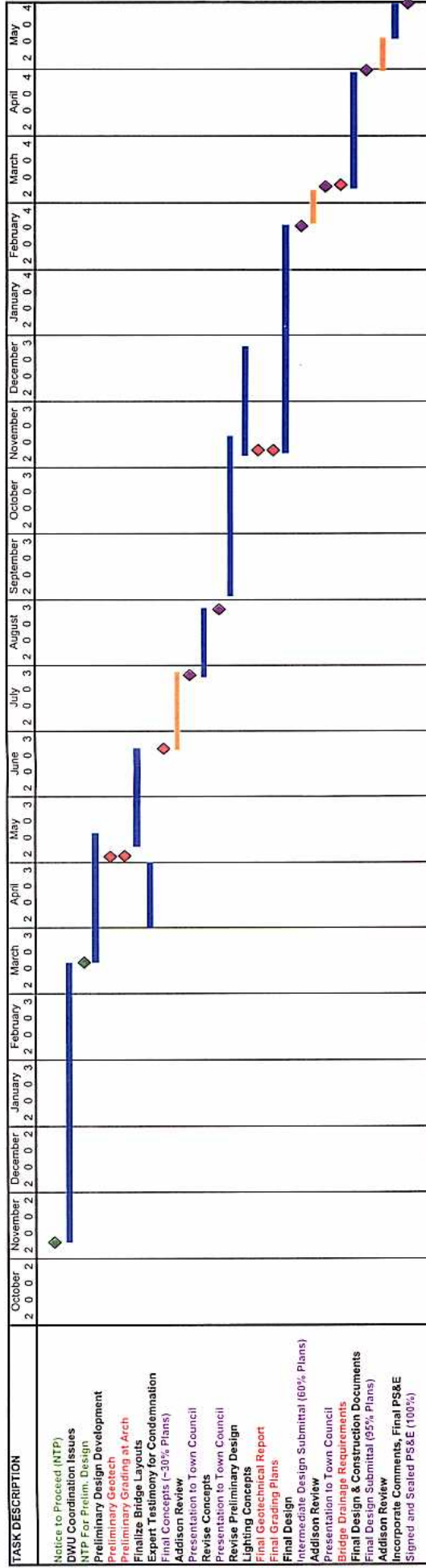
URS Corporation

	No. of Sheets	Principal	Senior Consult.	Project Mangr	Sr. Project	Project Eng/Plan	Sr. Tech.	Tech.	Clerical W/P	Total Hours	Total Labor Cost	Direct Expenses	Total Cost
		\$185.00	\$165.00	\$135.00	\$135.00	\$95.00	\$65.00	\$80.00	\$50.00				
TASK I - ENGINEERING		0	0	32	60	66	18	0	58	4	238	\$ 23,830.00	\$ 23,830.00
B. Bridges		0	0	32	60	66	18	0	58	4	238	\$ 23,830.00	\$ 23,830.00
1. Revise Preliminary Bridge Design (~30% submittal)		0	0	14	28	32	12	0	34	0	120	\$ 11,700.00	\$ 11,700.00
Revise Preliminary Bridge Layout (Finalize Bridge Location)						8	4		8		20	\$ 1,540.00	\$ 1,540.00
Revise Preliminary Typical Section				2	8	4			8		22	\$ 2,250.00	\$ 2,250.00
Refine Arch Shape				4	8	4			8		24	\$ 2,520.00	\$ 2,520.00
Re-Size Diaphragms				2	8	4					14	\$ 1,730.00	\$ 1,730.00
Re-develop Traffic Railing Members						4			6		10	\$ 770.00	\$ 770.00
Develop Slingers				4		8	4		4		20	\$ 1,820.00	\$ 1,820.00
Coordinate Culvert Layout											0	\$ -	\$ -
Revise Quantities and Cost Estimate				2	4						10	\$ 1,070.00	\$ 1,070.00
2. Final Bridge Design, PS&E (65%, 95%, 100% submittals)		0	0	18	32	34	6	0	24	4	118	\$ 12,130.00	\$ 12,130.00
Prestressed Concrete Beam Unit - Add Deck Plan for Widened Deck						12	6		12		30	\$ 2,310.00	\$ 2,310.00
Bridge Slinger Details				6	32	16			12		66	\$ 7,430.00	\$ 7,430.00
Additional Coordination with Town				12		6			4		22	\$ 2,390.00	\$ 2,390.00
TASK II - ARCHITECTURAL					\$140.00	\$125.00	\$60.00		\$35.00				
A. Design Development		0	0	0	48	0	36	0	40	0	124	\$ 10,280.00	\$ 10,280.00
1. Architectural Studies & Details		0	0	0	48	0	36	0	40	0	124	\$ 10,280.00	\$ 10,280.00
Develop revised traffic rail option and the Architectural option to realize the proposed triangular pattern.													
Develop Bridge Mounted "Slingers"					12		24				36	\$ 3,120.00	\$ 3,120.00
Attend Additional Meetings to coordinate the architectural aspects of the design.					24		12		40		76	\$ 5,480.00	\$ 5,480.00
					12						12	\$ 1,680.00	\$ 1,680.00
TASK III - LIGHTING DESIGN			\$175.00		\$140.00	\$105.00		\$90.00					
A. Design Development		0	40	0	8	16	0	22	0	0	86	\$ 11,780.00	\$ 11,780.00
1. Develop color alternatives for lighting of arch.		0	40	0	8	16	0	22	0	0	86	\$ 11,780.00	\$ 11,780.00
2. Develop mounting concepts for bridge structure and stinger lighting											0	\$ -	\$ -
3. Attend Additional Meeting with Town and perform lighting mock-up											0	\$ -	\$ -
TASK V - PROJECT MANAGEMENT													
B. Coordination		0	0	8	0	0	0	0	0	0	8	\$ 1,080.00	\$ 1,080.00
4. Council or other Town Meetings (1)		0	0	8	0	0	0	0	0	0	8	\$ 1,080.00	\$ 1,080.00
6. Project Meetings with Addison Public Works (2)				4							4	\$ 540.00	\$ 540.00
				4							4	\$ 540.00	\$ 540.00

Grand Total	0	40	40	116	82	54	22	98	4	456	\$ 47,290.00	\$ 2,500.00	\$ 49,790.00
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URS Corporation
 Arapaho Road Bridge at Midway Road
 Design Development and Contract Documents
 Change Order No. 03 to Work Order No. 001

ATTACHMENT M
 Revised Estimated Schedule



◆ NTP
 ◆ REQ'D INFORMATION FROM TOWN'S CONSULTANT
 ◆ SUBMITTAL

Council Agenda Item: #R9

SUMMARY:

Consideration and approval of the City Managers recommended incentive compensation reward to Washington Staubach Addison Airport Venture for fiscal year 2002-2003 in the amount of \$176,612.

FINANCIAL IMPACT:

Cost: \$176,612

Funds are available in the Airport Fund.

BACKGROUND:

The Town's operating contract with Washington Staubach Addison Airport Venture (WSAAV) calls for an annual assessment and potential incentive payment for achievements in designated categories. This year's categories include: Financial Performance, Noise Program, Safety, Control Tower, Fuel Farm, Hangar Construction, Perimeter Fence, Facility Inspection Program, Minimum Standards/ Rules & Regulations.

Attached is the staff recommendation related to each of the assessment categories. There are also the following attachments:

- MEMORANDUM FROM MARK ACEVEDO
- INCENTIVE COMPENSATION SPREADSHEET
- RANDY MORAVEC – DISTRIBUTION OF AIRPORT REVENUES MEMO
- CATEGORIES OF ADDITIONAL SERVICES COMPENSATION
- SECOND AMENDMENT TO THE OPERATING AGREEMENT
- "EXHIBIT 3" FROM OPERATING AGREEMENT

RECOMMENDATION:

Staff recommends approval of \$176,612 to WSAAV for 2003 incentive compensation.

INTEROFFICE MEMO

DATE: 11/11/03
TO: RON WHITEHEAD, CITY MANAGER
CC: CHRIS TERRY, ASSISTANT CITY MANAGER
RANDY MORAVEC, FINANCE DIRECTOR
FROM: MARK ACEVEDO, FACILITIES AND FLEET ADMINISTRATOR
RE: WASHINGTON STAUBACH INCENTIVE COMPENSATION RECOMMENDATION

BACKGROUND:

In accordance with the Operating Agreement between the Town of Addison and Washington Staubach Addison Airport Venture, WSAAV has the ability to earn incentive compensation each year of the agreement for performance that exceeds the Town's expectations. The maximum amount of incentive compensation is calculated at 90% of the base management fee, which is directly related to gross revenues. As airport revenue increases, the percentage for incentive amounts increase as well. Likewise, any decrease in revenue will result in a lesser percentage for incentive, as it did this year. Staff met on several occasions to consider our evaluation and is in concurrence with the following recommendation of \$176,612 for WSAAV incentive compensation for calendar year 2003.

In making this recommendation, staff utilized the evaluation criteria identified in "Exhibit 3" of the operating contract, the revised categories of incentive compensation as outlined in the Second Amendment to the Operating Agreement, an accomplishment narrative submitted by WSAAV, revenue data maintained by the Town's Finance Department, noise complaint correspondence along with other materials. All this information was considered in developing the monetary reward recommendations for each category. Staff also met with WSAAV to share our assessment and discuss operational activities for the operating team to focus their attention on in the coming year.

Staff's philosophical approach to this performance incentive process was two-fold. One, we attempted to recognize work or accomplishments that went beyond expectations. Merely performing at expected levels does not merit a bonus; rather, the accomplishment should exceed the normal expected performance both in task and in quality. In fact, "Exhibit 3" of the operating contract states:

"While the City expects a high level of performance from the Operator, the provision of increasingly challenging levels of performance with commensurate financial rewards is intended to stimulate the Operator to higher levels of excellence for the Airport and the City."

Second, this process should identify for the operating team those areas of concern that need additional attention in the coming year. Identifying areas for improvement is an important means to providing adequate feedback for future performance and rewarding exceptional future performance.

The maximum potential monetary amounts are identified in each category in this memorandum. The total amount WSAAV could have received if they had achieved the maximum share of the base management fee allowed for this year is \$397,374. This compares to last fiscal year eligible amount of \$419,010.

RECOMMENDATIONS:

Financial Performance – Max. Goal Amount \$110,382 – Recommended Amount \$ -0 -

The goal amount for this category is commensurate with the financial performance of the Airport based on the increase in airport gross revenue. The benchmark for 2003 is the amount received in 2002, or \$4,021,725. The amount received in 2003 is \$5,131 less than the benchmark and therefore is not eligible for a financial incentive bonus for 2003.

Noise Program – Max. Goal Amount \$44,153 – Recommended Amount \$35,322

The Operator has made continued progress implementing the noise abatement plan, and heightening the awareness of the plan to flight departments with a strong emphasis to the transient pilot. The Operator has installed a new advanced flight tracking computer program, FlightView, which allows them to track flights in real time plus allows them to archive the data for future use. They are now better able to track arriving and departing aircraft. Once the aircraft operator is identified, a letter is sent reminding the owner of the noise procedure and asking for his assistance and compliance. Airport management also tracks those who follow the procedure and send a letter thanking them for their cooperation. In addition, "Fly Friendly Over Addison" T-shirts continue to be randomly sent to flight departments who correctly followed the procedures. The FlightView system is much more efficient than having someone sit in the tower to monitor every flight or having an airport staff person listen to hours of tape in an attempt to identify the offending aircraft.

The noise committee continued to meet monthly throughout the year and two new homeowners from the Oaks North/Bellbrook areas joined the committee. The committee decided to begin meeting every other month instead of each month. There is general agreement by the committee that we are making a concerted effort to address the problem and recognition that the noise will never completely go away.

The flight tracking system gives us access too much better, real time, information so that more flights can be identified. The fact that the noise committee has decided to meet every other month instead of every month shows that the community is beginning to understand the nature of the problem and the fact that, although the problem will never really go away, it is being monitored and progress is being made.

Safety – Max. Goal Amount \$44,153 – Recommended Amount \$17,661

Airport management has researched and developed a safety information sheet (attached) that can be used in instances where there are concerns about the safety of the airport. This issue deals, primarily, with the safety of the airport as it affects the ordinary citizens rather than the safety on the airport. The information sheet can be distributed to citizens or community groups, as needed. The information is currently in a Word document format, but can be formatted to meet the particular need.

Control Tower – Max. Goal Amount \$44,153 – Recommended Amount \$44,153

The Operators lobbying efforts were successful in bringing this project forward. The Addison Control Tower was included in the FY2003 Federal Omnibus Spending Bill that was signed on February 20th by President George W. Bush. The bill earmarks \$5.7 million for the construction of the Addison tower. Bids for the project were opened October 7, 2003 and a contractor has been selected. The project is expected to take 365 days, with another 12 to 18 months for equipment installation and certification. Groundbreaking is expected to take place in January 2004. Special events will be planned for both the groundbreaking and commissioning of the tower.

Fuel Farm – Max. Goal Amount \$44,153 – Recommended Amount \$13,246

The Operator developed cost estimates, which served as the basis for the Council briefings and approval of the design contract. They have recommended that the fuel farm be relocated north of Roscoe Turner Drive as it enters the airport on the southeast side. This location allows us to continue operation of the existing fuel farm while the new site is being constructed and utilizes land space that would be less desirable for any redevelopment opportunities.

The Operator has been instrumental in bringing the current fuelers together for positive and productive meetings that solicit their input for the new farm. The fuelers were asked about their current and future needs and the type of equipment they will require. Upon completion of contract negotiations, the design will begin, which is expected to take 200 calendar days to complete.

Hangar Construction – Max. Goal Amount \$44,153 – Recommended Amount \$8,831

This category called for the development of a plan and process for the construction of additional T-hangars, recommendations on optimal sites, develop a financing plan and lease structure, and survey T-hangar occupants to determine interest. The Operator along with the Master Plan has begun to identify areas that would be suitable for hangar construction. All locations require either the demolition of existing hangars or extensive infrastructure costs in order to obtain access to the taxiways. The Operator is still working towards this goal. Until new hangars can be constructed, maintaining the existing hangars so that they are still marketable while balancing extensive repair expenditures is a challenge that they are doing well. The T-hangars on the southwest corner of the airport are the primary focus and are scheduled for repairs this year. The Operator has met with a structural engineer to obtain professional advice as to the best way to proceed with these repairs. Work will begin as soon as a viable plan of action is developed.

Perimeter Fence – Max. Goal Amount \$44,153 – Recommended Amount \$ 13,246

The Operator was tasked with preparing estimates for replacement fencing based on three scenarios: in-kind, vinyl coated, wrought iron. Recommend a type and price to the Town, select contractor, and develop phasing for construction to maintain security. The Operator has prepared estimates for three types of fencing. (Replace in kind: \$107,400 -Vinyl coated wire fence: \$176,000 - Wrought iron: \$760,000) Given the estimated expense of the number of higher priority items, they do not recommend that this expenditure be funded at this time. They have included routine fence repair expenditures in the FY2004 budget.

At such time that new fencing is contemplated, they have recommend that the area of Lindberg Road, Midway Road – North end, Westgrove, and the front entrance area in the vicinity of the former administration site be replaced with wrought iron fencing. The cost of this installation is estimated to be \$291,403. The remainder of the fence can be replaced with vinyl coated chain-

link fencing at a cost of \$112,583. The total cost of the new fence, including, three wrought iron gates, would be \$403,986.

Facility Inspection Program - Max. Goal Amount \$44,153-Recommended Amount \$-0-

The Operator has the opportunity for incentive based on developing a program for facility inspection, to ensure that tenants and airport maintain facilities. The program is to include coordination with Town departments, notify tenants of their responsibility, and schedule repairs.

Preliminary information, such as the facility type, size, and needed repairs has been obtained. This information will be incorporated into an asset management system that will track, among other items, lease execution, amendments, facility repairs and improvements, and expiration. Additional information, such as door heights, door widths, and hangar and office dimensions will be obtained for each hangar. This information will then be incorporated into the management system. This system is currently being designed and will be implemented in FY2004. Staff looks forward to further progress in this category as this program will be based on Addison Building Code and will be instrumental in ensuring that the airport facilities are maintained to a high standard.

Minimum Standards/ Rules & Regulations – Max. Goal Amount \$44,153 - Recommended Amount \$ 44,153

This category called for the development of primary documents which consist of Minimum Standards and Rules & Regulations for the Airport. The Operating team established a committee consisting of airport tenants, staff, and Town representatives to recommend minimum standards and rules and regulations for the airport. The committee met eight times during the year. The final draft was submitted to the Town for review in September. On October 30, the committee met for the final time to review the final document.

The document will be made available on the Town's web site and in print form at the administration office and to any tenant who does not have access to the Internet. These documents will be given to all new tenants and to anyone desiring information about developing on the airport.

Involving the tenants in the developments of these documents was well received by all who participated in the process. The tenants appreciated the opportunity to voice their concerns and to see that they were listened to. The tenants offered many positive and productive comments and revisions to the draft documents. The result is the minimum standards and rules and regulations that have been written with the help of those who are most affected by them. This should result in greater buy-in and greater compliance.

MA

ATTACHMENTS: INCENTIVE COMPENSATION SPREADSHEET
RANDY MORAVEC – DISTRIBUTION OF AIRPORT REVENUES MEMO
CATEGORIES OF ADDITIONAL SERVICES COMPENSATION
SECOND AMENDMENT TO THE OPERATING AGREEMENT
“EXHIBIT 3” FROM OPERATING AGREEMENT

Washington Staubach
Incentive Compensation Recommendation
CY 2003

Category	Last Year 2002		
	Maximum Goal Amount	Recommended Amount	Recommended Amount
Financial Performance	\$ 110,382.00	\$ -	\$ 116,392.00
Noise Program	\$ 44,153.00	\$ 35,322.00	\$ 18,623.00
Safety	\$ 44,153.00	\$ 17,661.00	\$ 9,311.00
Control Tower	\$ 44,153.00	\$ 44,153.00	\$ -
Fuel Farm	\$ 44,153.00	\$ 13,246.00	\$ -
Hangar Construction	\$ 44,153.00	\$ 8,831.00	\$ -
Perimeter Fence	\$ 44,153.00	\$ 13,246.00	\$ -
Facility Inspection Program	\$ 22,076.00	\$ -	\$ -
Min. Standards-Rules & Regulations	\$ 44,153.00	\$ 44,153.00	\$ -
*Other Categories from 2002			\$ 134,392.00
Totals	\$ 441,529.00	\$ 176,612.00	\$ 278,718.00
Per the Agreement the Incentive Compensation is capped at 90% of the Base Management Fee	\$397,376.00	\$ 176,612.00	

* Optional - Not included in Base Mgnt. Fee.

* Customer Service, Maintenance, Airport Recognition, Through-the-Fence.

Explanations Of Criteria Areas For Incentive Compensation FY2003

1. **Financial Performance:**

Based on the increase in airport gross revenue

Maximum of 25% of the Operator's Base Management Fee

Table 3 from amendment show the percentage of the base management fee that can be paid based on the percentage of growth

2. **Noise Program:**

Develop and publish a comprehensive noise program that includes community involvement, coordination with FAA, complaint tracking, complaint response, with and without computer based flight tracking ability.

3. **Safety:**

Develop information for distribution as needed that addresses safety of airport vs. surface transportation as well as compared to other general aviation airports. Information will be distributed in 8X11 format or 2 color brochure.

4. **Control Tower:**

Use lobbying efforts to have Addison Control Tower reinserted into the FY2004 funding cycle. If necessary, coordinate meetings in Washington with appropriate legislative representatives. Put together funding package for use in meetings detailing funding need and history of tower as well as benefit for replacement.

5. **Fuel Farm:**

Develop cost estimates for relocation and clean-up. Make recommendation for final site and coordinate clean-up and close out of old site. Final timing of site construction will depend on Town's funding. (Bond sale schedule, etc).

6. **Hangar Construction:**

Develop plan and process for construction of additional T-hangars. Determine optimal site for construction. Develop financing plan and lease structure. Survey T-Hanger occupants to determine interest in new hangars at new rate.

7. **Perimeter Fence:**

Prepare estimates for fence installation based on three scenarios 1) replacement in kind 2) vinyl coated 3) wrought iron. Make recommendation to Town, select contractor, develop phasing for replacement to ensure security of airport is maintained at all times.

8. Facility Inspection Program:

Develop program for facility inspection to ensure facilities are maintained by tenants and airport. Coordinate with appropriate Town departments. Prioritize findings, notify tenant of their responsibility. Schedule repairs.
(Based on Addison Building Code)

9. Minimum Standards/Rules and Regulations:

Establish committee of users to develop standards. Gather examples of other similar airports. Draft standards and rules. Coordinate with city secretary regarding ordinance inclusion. Review insurance requirements with risk manager.



Finance Department

MEMO

To: Mark Acevedo, Facilities & Fleet Services Administrator

From: Randy Moravec, Finance Director

Re: 2003 Incentive Compensation – Financial Performance

Date: November 11, 2003

In response to your request, I have reviewed the income generated by the airport while under the management of Addison Airport Venture, for determining whether the Venture is eligible to receive incentive compensation in accordance with Exhibit 3 of the operating agreement. Income for the year ended September 30, 2003 is detailed below.

Ground Lease	\$ 1,479,341
T Hangar	775,025
Jet Hangar	188,889
Patio Hangar	106,396
Tie Down	68,048
TTF Access Fees	111,112
Managed Hangar (net)	53,444
Fuel Farm Lease	100,099
Fuel Flowage Fee	1,040,324
Customs Fees	16,126
Miscellaneous Income	77,790
Total	<u>\$ 4,016,594</u>

The benchmark for 2003 is the amount received in 2002, or \$4,021,725. The amount received in 2003 is \$5,131 **less than** the benchmark and therefore the Venture is not eligible for a financial incentive bonus for 2003.

Please contact me should you have any questions concerning this matter or wish to discuss further.

SAFETY IS ADDISON AIRPORT'S FIRST PRIORITY

Early in aviation history, airports were typically located away from urban areas. As airports became economic engines to the cities they served, development grew closer to the airports. Likewise, citizens became more aware of issues regarding airport public safety.

Addison Airport is one of more than 5,000 general aviation airports in the United States. Located in the heart of a busy commercial and residential area, the Town of Addison and Addison Airport management are committed to a high level of safety and security at the airport.

How safe is Addison Airport?

The Town of Addison and Addison Airport management have exceeded Federal Aviation Administration safety and security regulations to ensure a safe environment on and off Airport.

- The Town of Addison's Police Department and Fire Department are headquartered at the Airport.
- A perimeter fence, electronic gates, regular patrols by the Addison Police Department, and an Airport Watch program are in place at the Airport.
- The Addison Fire Department is equipped with state-of-the-art aircraft rescue and firefighting equipment and its firefighters are trained to handle any aircraft emergency that might arise.
- Annually, a full-scale emergency exercise is conducted to evaluate the city's multi-agency response and readiness systems and procedures.

✈ Addison Airport's safety record

- Since the Town of Addison assumed ownership of Addison Airport in 1976, 20 aircraft incidents have been reported at the Airport. Of the 20 total incidents, 18 occurred at the Airport and consisted of:
 - Landing gear malfunctions
 - Taxiing issues
 - Mid-air incidents – planes crossing each other with minimal separation
- Two of the 20 reported incidences occurred in residential areas. While no one on the ground sustained an injury in either incident, there was a pilot casualty in one.

✈ General Aviation is safe

- Vehicular accidents account for the greatest number of fatalities (94 percent) among all types of transportation. Of the remaining 6 percent of incidences, less than 1 percent involves general aviation.

✈ **How safe are you living near Addison Airport?**

- The safety of those living and working near an airport is related in great part to the condition of the aircraft and the pilots who fly into the airport.
- All aircraft undergo pre-flight, periodic and annual inspections to ensure that they are air-worthy. Documents certifying the aircraft's condition and airworthiness must be up-to-date and aboard the aircraft at all times.
- The FAA certifies and rates pilots, specifying what aircraft they may fly, whether they may carry passengers, fly for hire, or fly in certain weather conditions. Pilots must also hold a current medical certificate issued by an FAA-designated physician.
- Addison Airport's management team is responsible for maintenance of runways and signaling systems. An FAA staffed control tower communicates with all pilots regarding take-offs and landings, and advises pilots of current weather conditions along their flight path.
- The Airport is fully prepared to respond quickly and appropriately in those instances where an aircraft malfunction or a pilot error results in an incident.

✈ The citizens of the Town of Addison and the surrounding area can be assured that the Town leadership and Airport management are vigilant in maintaining a safe airport environment.

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

SECOND AMENDMENT TO AGREEMENT
FOR THE OPERATION AND MANAGEMENT OF ADDISON AIRPORT

THIS SECOND AMENDMENT to Agreement for the Operation and Management of Addison Airport ("Second Amendment") between the Town of Addison, Texas ("City") and Washington Staubach Addison Airport Venture ("Operator") is made and entered into this the ____ day of February, 2002.

Recitals:

1. The City is the owner of Addison Airport (the "Airport"). On or about August 8, 2000 the City and Operator, together with the entities which formed the Operator as a joint venture, Raytheon Infrastructure, Inc. (a wholly owned subsidiary of Washington Group International, Inc.) and Staubach Airport Management, Inc. (a subsidiary of The Staubach Company), entered into an agreement for the operation and management of the Airport entitled "Agreement for the Operation and Management of Addison Airport" (the "Airport Management Agreement" or "Agreement"). The Airport Management Agreement has an effective or commencement date of January 1, 2001.

2. The Airport Management Agreement provides in Section 6.C. thereof that the Operator has the ability to earn incentive compensation as described therein and in Exhibit 3 to the Agreement (which incentive compensation is a supplement to the Management Fee as defined in the Agreement). Such incentive compensation can be earned through the Operator's achieving certain operational and management objectives which are established in specific performance categories. These performance categories (consisting initially of financial performance, customer service, safety and maintenance, noise abatement, and special issues), and the operation and management objectives, may be modified and amended by the City and the Operator.

3. The Agreement further provides that the annual incentive compensation may be allocated among the performance categories based on a weighted percentage, which allocation may be modified or adjusted annually by agreement of the City and the Operator to address the then current priorities of the City.

4. The City and the Operator desire to amend the Airport Management Agreement to reflect a change in the performance categories, the operation and management objectives, and a change in the weighted percentages.

NOW, THEREFORE, for and in consideration of the mutual covenants and obligations set forth herein, the benefits flowing to each of the parties hereto, and other good and valuable consideration, the Town of Addison, Texas and Washington Staubach Addison Airport Venture do hereby agree as follows:

Section 1. Incorporation of Premises. The above and foregoing premises are true and correct and are incorporated herein and made a part of this Second Amendment for all purposes.

Section 2. Amendments. The Airport Management Agreement is amended as follows:

A. Section 6, subsection C. is amended so that it shall hereafter read in its entirety as follows:

“C. Incentive Compensation. Operator shall have the ability to earn incentive compensation during the First Partial Contract Year and each subsequent Contract Year as set forth in Exhibit 3. A portion of such incentive compensation may be earned based on the achievement of objectives for two levels of performance or such other performance criteria as the Parties may agree upon. If two levels of performance are used, the first such level of performance shall be considered as the “Level I performance objective” and the second level of performance shall be considered as the “Level II performance objective” as described in Exhibit 3 attached hereto. The amount of potential incentive compensation which may be earned shall be annually established as a percentage of the “Base Management Fee” earned during the First Partial Contract Year or the applicable Contract Year by satisfying a combination of objective and subjective achievement goals (some of which are to be established annually through mutual agreement between Operator and City) (“Incentive Compensation Plan”) in the categories outlined below (as the same may be amended or modified from time to time by mutual agreement of the Parties). If two levels of performance are used (as described above), the said potential incentive compensation which may be earned by the Operator shall be established at sixty percent (60%) of the Base Management Fee for achieving 100% of the Level I performance objectives and at ninety percent (90%) of the Base Management Fee for achieving 100% of the Level II performance objectives.

Categories of Incentive Compensation:

1. Financial Performance
2. Customer Service
3. Safety and Maintenance
4. Noise Abatement
5. Special Issues.

The percentage of incentive compensation shall be allocated among the categories set forth as 1-5 above based on a weighted percentage, which may be amended by mutual agreement of the Operator and City. The initial allocation shall be twenty-five percent (25%) to category 1, thirty-five percent (35%) to category 2, twenty percent (20%) to categories 3 and 4, and ten percent (10%) to category 5. Exhibit 3 sets forth the achievement goals

for the First Partial Contract Year and provides incentive compensation formats and illustrations to facilitate consistent application of the incentive compensation process. Exhibit 3 further provides and establishes the details for implementing and administering the Incentive Compensation Plan under this Agreement. Each Contract Year, as part of the annual budgeting process, the Operator and City shall mutually agree on the achievement goals, the criteria for determining whether or not such goals have been met or exceeded for the next Contract Year, and the incentive compensation amount, and shall submit same for approval as part of the Operating Budget. As soon as practical, following the end of each Fiscal Year, the City and Operator shall review Operator's performance in accordance with the pre-determined goals for such year and all incentive compensation payable shall be paid to Operator within ten (10) days following such determination, but in no event later than December 15 of such year. To the extent incentive goals are by their nature earned prior to the end of the City's fiscal year, same shall be payable as set forth in Exhibit 3.

The Parties agree that the terms and conditions of the incentive compensation (including, without limitation, the performance categories, operation and management objectives in connection with those performance categories, and the weighted percentage of the total incentive compensation allocable to each of the performance categories) may be agreed upon without the requirement of a formal amendment to this Agreement; provided, however, that any such agreement which is not a formal amendment hereto shall nevertheless be in writing and fully executed by both Parties."

B. Exhibit 3 to the Agreement is amended as follows:

1. Part I of Exhibit 3 is amended to read as set forth in Attachment 1 to this Second Amendment.
2. Attached to this Second Amendment as Attachment 2 is a document entitled "Categories of Incentive Compensation". This document lists certain performance categories (together with an explanation of some of the categories), operation and management objectives in connection with those performance categories, and a weighted percentage of the total incentive compensation for each of the performance categories. The provisions of Attachment 2 are intended to modify and supplement Exhibit 3 to the Airport Management Agreement and to apply to the incentive compensation process for the Contract Year beginning October 1, 2001 and ending September 30, 2002; to the extent that the terms of Attachment 2 are inconsistent with or contradictory to the terms of the said Exhibit 3, the terms of Attachment 2 shall control.

Section 3. No Other Amendment. Except as set forth in Section 2 above, nothing in this Second Amendment is intended to nor shall be construed to modify, alter, or change the Airport Management Agreement ,and all other terms, conditions and

obligations of the Airport Management Agreement shall remain unchanged and in full force and effect.

Section 4. No Benefit to Third Parties. The provisions of this Second Amendment are solely for the benefit of the City and Operator and are not intended to create or grant any rights, contractual or otherwise, to any third person or entity.

Section 5. Authority to Execute; Effective Date; Counterparts. The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Second Amendment on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect. This Second Amendment shall be effective as of the date first set forth above. This Second Amendment may be executed concurrently in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A facsimile signature by a party hereto shall be treated as an original signature for purposes of this Second Amendment.

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement as of the date first set forth above.

TOWN OF ADDISON, TEXAS

**WASHINGTON STAUBACH ADDISON
AIRPORT VENTURE**

By: _____
Ron Whitehead, City Manager

By: **RAYTHEON
INFRASTRUCTURE, INC.**

ATTEST:

By: _____
Typed Name: _____
Its: _____

By: _____
Carmen Moran, City Secretary

By: **STAUBACH AIRPORT
MANAGEMENT, INC.**

By: _____
Larry Kimbler, President

RAYTHEON INFRASTRUCTURE, INC.

**STAUBACH AIRPORT MANAGEMENT,
INC.**

By: _____
Typed Name: _____
Its: _____

By: _____
Larry B. Kimbler, President

EXHIBIT 3 – INCENTIVE COMPENSATION AIRPORT OPERATING AGREEMENT

I. OVERVIEW:

Section 6. C of the Agreement for the Operation and Management of Addison Airport (Operating Agreement) outlines the concept and broad parameters of incentive compensation, as a supplement to the Management Fee, to be paid the Airport Operator for achieving desired operational and management objectives. This Exhibit establishes the details for implementing and administering the Incentive Compensation Plan under this Agreement.

The Operator shall have the ability to earn incentive compensation each year of this Agreement, including the First Partial Contract Year. An annual incentive compensation plan (“Annual Incentive Compensation Plan”) shall be established each year as part of the City’s budget process for the operation of the Airport. The Incentive Compensation Plan will provide for incentive compensation to be earned based on the achievement of objectives established in specific performance categories that initially will include:

1. Financial Performance
2. Customer Service (also including Airport recognition)
3. Maintenance and Safety
4. Noise Abatement
5. Special Issues

These categories may be amended by mutual consent of the Operator and the City.

The Incentive Compensation Plan may provide for two levels of performance as appropriate to achieve City objectives in the different categories. While the City expects a high level of performance from the Operator, the provision of increasingly challenging levels of performance with commensurate financial rewards is intended to stimulate the Operator to higher levels of excellence for the Airport and the City. Incentive compensation is provided for in two methods either in proportion to revenue performance (in the case of the financial performance category) or based upon two levels of incentive performance established with specific accomplishment criteria to be adopted as part of an Annual Incentive Compensation Plan incorporated into the Annual Airport Budget (in the case of the categories of customer service, maintenance and safety, and noise abatement).

The amount of potential incentive compensation which may be earned shall be annually established as a percentage of the “Base Management Fee” earned during the First Partial Contract Year or the applicable Contract Year by satisfying a combination of objective and subjective achievement goals, which goals for categories 2, 3, 4, and 5 listed above are to be approved and established with the City’s annual budget process and mutually

agreed upon between Operator and City. Said potential incentive compensation is variable. Incentive compensation for achieving financial performance objectives shall utilize the proportionate methodology set forth herein and may range from \$1.00 up to 100% of the amount established for such category. Incentive compensation for achieving customer service, maintenance and safety, or noise abatement which use two levels of performance goals shall range up to sixty percent (60%) for achieving 100% of the level I performance objectives and may increase up to ninety percent (90%) for achieving 100% of level II performance objectives as further detailed in section III below. Incentive Compensation for achieving Special Issues shall be as detailed herein or as annually established by mutual agreement.

A portion of the annual incentive compensation shall be allocated among the five categories (listed above and further detailed below, or as they may be mutually modified by the Parties) based on a weighted percentage, which may be amended by mutual agreement of the Operator and City. The initial allocation of incentive compensation is shown in the examples later illustrated in this Exhibit. It is specifically provided that the percentage or weighting of the allocation of the annual incentive compensation may be amended or adjusted annually to address the then current priorities of the City. Amendment or adjustment of the weighting will be by mutual consent.

This Exhibit also sets forth the achievement goals for the First Partial Contract Year and provides incentive compensation formats and illustrations to facilitate consistent application of the incentive compensation process. Each Contract Year, as part of the annual budgeting process, Operator and City shall mutually agree on the achievement goals and the criteria for determining whether or not such goals have been met or exceeded for the next Contract Year and shall submit same for approval as part of the process to establish the Approved Operating Budget. As soon as practical, following the end of each Contract Year, City and Operator shall review Operator's performance in accordance with the pre-determined goals (which may necessitate auditing the appropriate records relative to each performance category) and pay Operator such incentive compensation as may have been earned within ten (10) days following such determination, but in no event later than December 15 following the end of the applicable fiscal year.

II. DEFINITIONS (for Incentive Compensation Issues)

Base Management Fee – The Base Management Fee shall be an amount equal to 10% of the actual Gross Revenue received in a contract year.

Gross Revenues – Gross Revenue is defined in Section 2 of this Agreement.

Prior Year Gross Revenue - The Prior Year Gross Revenue shall mean the amount of annual Gross Revenue for the Fiscal Year immediately preceding a Contract Year under this Operating Agreement.

Maximum Incentive Compensation – The maximum incentive compensation shall not exceed 90% of the Base Management Fee for a given Contract Year (coincides with City fiscal year) and shall be subject to such funds being available from the Airport Fund after all operational and other contractual Airport costs are funded. In the event Airport funds are not immediately available when due, the incentive compensation shall be paid from the Airport Fund as soon as funds are available.

Illustration / Example Tables Used in Exhibit III – The illustrative tables used in this Exhibit are intended to serve as examples of the application of the incentive compensation policy / methodology under this Agreement. The initial and projected financial calculations are illustrative of the manner in which the incentive compensation provision is to be applied, but are not intended to be indicative of the actual amount of incentive compensation to be earned for any given category of incentive compensation for any specific year. Amounts shown are hypothetical projections and in many cases may prove to be relatively inaccurate. Actual incentive compensation amounts shall be determined by substituting the actual base year annual Gross Revenues (as of September 30, 2000, the initial base year) and the actual incentive evaluation criteria as approved in the budget or provided for in this Agreement into the relevant calculation tables. Updating the illustrative tables with precise data and performance indicators will produce the actual amount of incentive compensation earned for a given contract year.

III. INCENTIVE COMPENSATION CATEGORIES AND PERCENTAGE

Table 1 below illustrates the five basic categories of incentive compensation which may be incorporated into the annual appropriation ordinance of the City and the Annual Incentive Compensation Plan. Also shown is the percentage of incentive compensation attributable to each category, the maximum dollar amount of incentive compensation for each category, and the maximum dollar amount of incentive compensation which can be earned where such incentive compensation is based on achieving certain objectives defined as performance goals and referred to herein as Level I Performance Goals and Level II Performance Goals.

It is again noted that a portion of the annual incentive compensation shall be allocated among the five categories set forth in the table below (or as they may be mutually modified by the Parties) based on a weighted percentage, which may be amended by mutual agreement of the Operator and City. The initial allocation of incentive compensation is shown in the examples later illustrated in this Exhibit (see, e.g., Table 1). It is specifically provided that the percentage or weighting of the allocation of the annual incentive compensation may be amended or adjusted annually, by mutual consent, to address the then current priorities of the City. .

It is reemphasized that the percentage and resulting dollar amounts of potential incentive compensation for the categories are to be viewed as initial targets, not precise amounts, for establishing the Annual Incentive Compensation Plan and are shown for illustrative

purposes only. The amounts indicated for each category are intended to indicate the maximum amount which will be paid as incentive compensation for any category, subsection to partial year pro-rata in the First Partial Contract Year. Additionally, annual incentive compensation is subject to adoption of actual maximum incentive compensation amounts as part of the annual Airport Budget by the Addison City Council.

Table 1 – Categories of Incentive Compensation

CATEGORIES OF INCENTIVE COMP*	% OF INCENTIVE COMP*	Maximum \$ SHARE OF BASE MGT FEE OF \$400,000	\$ AMOUNT FOR ACHIEVING LEVEL I PERFORMANCE GOAL (60% BASE MGT FEE)	\$ AMOUNT FOR ACHIEVING LEVEL II PERFORMANCE GOAL (90% BASE MGT FEE)
I. Financial Performance / Gross Revenue	25 %	\$100,000	Variable: \$1 to \$90,000 .	\$90,000 maximum [Note: financial performance is variable and not based on level I or level II performance goals)
II. Customer Service	35 %	\$140,000	\$84,000	\$126,000
III. Maintenance & Safety	20 %	\$80,000	\$48,000	\$72,000
IV. Noise Abatement	20%	\$80,000	\$48,000	\$72,000
V.. Special Issues	10 %*	\$40,000 (optional)	Variable to \$24,000	\$36,000 maximum
Total	Maximum Incentive Compensation shall not exceed 90% of Base Management Fee, thus maximum in this example would be \$360,000			

*Can be adjusted by mutual agreement on an annual basis

The five Categories of Incentive Compensation are further broken down in the sections below to illustrate with more specificity the calculation of the Incentive Compensation.

IV. CATEGORY I – FINANCIAL PERFORMANCE / GROSS REVENUE

The purpose of the financial performance category is to encourage the creative and aggressive marketing and promotion of Addison Airport. The Operator will be rewarded with incentive compensation commensurate with financial performance of the Airport based on the increase in Airport Gross Revenue.

As Annual Gross Revenue progressively exceeds the Initial Base Year Gross Revenue or subsequent Prior Year Gross Revenue, the Operator will be rewarded with an increasingly higher percentage of the annual increase in Gross Revenue. Table 3 below shows the methodology by which higher incentives may be earned as Gross Revenue is increased. Table 2 illustrates an example of incentive potential over the first six contract years under one growth scenario. In actuality, the incentive may be lower or higher than

illustrated in Table 2. This table will serve as the model by which the incentive for Gross Revenue Increase will be determined.

TABLE 2

**Financial Incentive Bonus
Example Showing Growth Above Index Over Five Years**

	Base Year	2001	2002	2003	2004	2005	2006
Actual Airport Revenues	4,000,000	3,150,000	4,410,000	4,630,500	4,862,025	5,105,126	5,360,383
Actual Year to Year Increase		5.0%	5.0%	5.0%	5.0%	5.0%	5.0%
Eligible Bonus Revenue		150,000	210,000	220,500	231,525	243,101	255,256
Eligible Bonus Percentage		24.0%	24.0%	24.0%	24.0%	24.0%	24.0%
Mgmt Fee - 18%		567,000	793,800	833,490	875,165	918,923	964,869
Financial Incentive Bonus		36,000	50,400	52,920	55,566	58,344	61,262
Total - Mgmt Fee + Financial Incentive Bonus		603,000	844,200	886,410	930,731	977,267	1,026,130
Incentive as a % of Mgmt Fee		6.3%	6.3%	6.3%	6.3%	6.3%	6.3%

Note: All years are based in the Town's fiscal year - October 1 to September 30, Therefore, 2001 is a partial year, January 1 to September 30.

TABLE 3

Financial Incentive Bonus Table

Description	Growth Percentage Above Index Adjustment		Financial Incentive Bonus %
	Range		
	Low	High	
Must be < high		3.5%	0.0%
Must be >= low and < high	3.5%	5.0%	20.0%
Must be >= low and < high	5.0%	6.5%	24.0%
Must be >= low and < high	6.5%	8.0%	28.0%
Must be > low	8.0%		32.0%

CATEGORY II – CUSTOMER SERVICE

Operator shall be entitled to incentive compensation for reaching certain stated goals (including two levels of goals, described as Level I Goals and Level II Goals) in the area of customer service. To determine whether or not certain customer service goals have been achieved, a survey may be required, and when a survey is required, the survey methodology, such as the City uses for its Citizen Survey, using independent survey sources and statistically valid survey techniques shall be used. The City will, in consultation with the Operator, conduct an initial customer service survey of Fixed Base Operators, Tenants and Based Users, Citizens, and City Staff and Council. These surveys shall serve as the base surveys on which the customer service incentive compensation is based. This compensation is further broken down into specific customer service areas as shown in Table 4 on the following page.

CATEGORY III – MAINTENANCE & SAFETY

Category III provides incentives for achieving increasingly higher levels of excellence in the areas of safety, maintenance, and administration of any Airport noise abatement plan or program. Table 5, on a following page illustrates the Level I and Level II incentive performance areas, methods for measuring or evaluating the performance areas, the general objectives for levels I and II and the potential incentive compensation associated with each.

CATEGORY IV – NOISE ABATEMENT

Category IV provides incentives for successful implementation of the City's Noise Abatement Program. The Operating Agreement provides for specific areas of implementing the noise abatement program. While implementation of the noise abatement program is expected as a contractual obligation, this category will reward the operator for achieving agreed program goals and objectives that exceed the basic operating agreement obligations. Table 6, on a following page illustrates the Level I and Level II incentive performance areas, methods for measuring or evaluating the performance areas, the general objectives for levels I and II and the potential incentive compensation associated with each.

TABLE 4 – CUSTOMER SERVICE INCENTIVES

Component	Evaluation Criteria	Level I Goal	Level II Goal	Incentive for achieving goal I	Incentive for achieving goal II
Customer Service – FBOs	Survey	5% increase year to year or average of respondents rating very good or outstanding (subject to adjustment by the parties)	10% increase year to year or average of respondents rating outstanding (subject to adjustment by the parties)	\$ 16,800	\$ 25,200
Customer Service – Tenants and based users	Survey	5% increase year to year or 80% of respondents rating very good or outstanding	10% increase year to year or 90% of respondents rating very good or outstanding	\$ 16,800	\$ 25,200
Customer Service – City Staff and Council	Survey	5% increase year to year or 80% of respondents rating very good or outstanding	10% increase year to year or 90% of respondents rating very good or outstanding	\$ 16,900	\$ 25,200
Citizens	Survey	5% increase year to year or 80% of respondents rating very good or outstanding	10% increase year to year or 90% of respondents rating very good or outstanding	\$ 16,800	\$ 25,200
Airport Recognition	Hosting meaningful (as determined by the City) events at the Airport or receiving recognition through publications or regulatory agencies	Combination of 3 instances of mutually acknowledged Airport recognition or Airport events initiated and nurtured by Operator	Combination of 6 or more instances of mutually acknowledged Airport recognition or Airport events (2 or more) initiated and nurtured by Operator	\$ 16,800	\$ 25,200
TOTAL POTENTIAL CUSTOMER SERVICE INCENTIVE GOAL				LEVEL I GOAL: \$84,000	LEVEL II GOAL: \$126,000

TABLE 5 – MAINTENANCE & Safety

Area	Evaluation Criteria	Level I Goal	Level II Goal	Level I \$	Level II \$
Safety	Safety Inspections, Safety Statistics/ Incidents, Police & Fire Evaluation, Routine Environmental Review / Correction Process, other criteria as may be established	Level I safety enhancements based on ratings of FAA and/or Tex Dot or other agreed to safety enhancements including safety meetings and training, notices to pilots, etc	Level II safety enhancements based on FAA , Tex-Dot or other agreed to safety enhancements including safety meetings and training, notices to pilots, etc.	\$24,000	\$36,000
Maintenance	Achieve Base Level Maintenance Standards as measured by FAA, TexDot, or City Standards	Achieve Base Level Maintenance Standards as measured by FAA or TexDot survey	Superior Condition and appear of Airport per FAA or TexDot survey and rating by other City Criteria	\$24,000	\$36,000
Total Maintenance and Safety Incentive Compensation				\$48,000	\$72,000

TABLE 6 – NOISE ABATEMENT INCENTIVE COMPENSATION

Area	Evaluation Criteria	Level I Goal	Level II Goal	Level I \$	Level II \$
Noise Abatement	Develop a noise abatement plan and obtain stakeholder support including awareness and education, offenders, FAA coordination and program enhancements, and other criteria as agreed	Plan in place and monitored; Citizen complaints are tracked and acknowledged, education and awareness campaign implemented, offender notification program implemented, and other issues as agreed	Plan in place with compliance achieved and maintained, reduction in citizen complaints from prior year, new FAA tower or flight path programs implemented, Part 150 study, and other issues as agreed	\$48,000 levels may be subdivided	\$72,000 levels may be subdivided

Table 7 below illustrates the potential six-year incentive compensation for the Customer Service, Maintenance & Safety, and Noise Abatement Categories based on the initial assumptions of the incentive program. The amounts can be adjusted as part of the annual budget process.

Table 7
Incentive Compensation
Customer Service/Maintenance and Safety/Noise Abatement

	2001	2002	2003	2004	2005	2006
Customer Service						
Town Staff/Council	12,600	16,800	16,800	16,800	16,800	16,800
Citizen	12,600	16,800	16,800	16,800	16,800	16,800
AirportUsers/Based Aircraft	12,600	16,800	16,800	16,800	16,800	16,800
FBO's	0	0	0	0	0	0
Airport Recognition	12,600	16,800	16,800	16,800	16,800	16,800
Total	50,400	67,200	67,200	67,200	67,200	67,200
Maintenance and Safety						
Maintenance	0	24,000	24,000	24,000	24,000	24,000
Safety	0	0	24,000	24,000	24,000	24,000
Total	0	24,000	48,000	48,000	48,000	48,000
Noise Abatement	0	48,000	48,000	48,000	48,000	48,000
Total	50,400	139,200	163,200	163,200	163,200	163,200

Note: All years are based in the Town's fiscal year - October 1 to September 30, Therefore, 2001 is a partial year, January 1 to September 30.

CATEGORY V- SPECIAL ISSUES

This category is reserved for annual goals or objectives which may arise as a result of new or revised City priorities. Specific performance goals and the incentive compensation associated with meeting either proportionate or Level I or II goals will be mutually agreed to and adopted by the City Council as a portion of the budget appropriation process. The initial Special Issues category provides for two components of Other Financial Incentives. The Operator shall be eligible for certain one-time incentives that benefit either the City or the Airport on a recurring basis. Two identified bonuses include:

Tax base Increase of the City – This incentive provides the operator a 25% fee for the first year tax revenue to the City for either identifying aircraft that are not paying proportional tax to the City for the time they are based in Addison or for adding aircraft to the certified appraisal roll on which the City may levy proportional personal property tax (illustrated in Table 8 below). Said 25% fee shall be earned when the aircraft becomes part of the tax roll and is payable when the City actually collects the first year tax revenues, subject to the availability of funds in the Airport Fund. In the event Airport funds are not immediately available when due, the incentive compensation shall be paid from the Airport Fund as soon as funds are available.

TABLE 8

**Addison Airport
Incentive Compensation
Financial - Other Revenue**

	2001	2002	2003	2004	2005	2006
Property Tax						
Tax Base Increase	\$20,000,000	\$20,000,000	\$20,000,000	\$20,000,000	\$20,000,000	\$20,000,000
Property Tax	76,000	76,000	76,000	76,000	76,000	76,000
25% of Tax	19,000	19,000	19,000	19,000	19,000	19,000
Incentive	0	19,000	19,000	19,000	19,000	19,000
Through the Fence						
Through Fence Revenue Increases	75,000	25,000	25,000	25,000	0	0
Incentive - 25%	18,750	6,250	6,250	6,250	0	0
Total Other Finance Incentives	18,750	25,250	25,250	25,250	19,000	19,000

Note: Property Tax incentives are earned when an asset is placed on the tax rolls, however, they are not paid until the property tax is collected. Therefore, taxes are assumed to be collected the year following the asset being placed on the tax rolls.

Through the Fence Operations – The operator will receive an incentive for either the improvement in revenues associated with securing City approved Through-the-Fence agreements with existing Through-the-Fence users or securing new Through-the-Fence agreements with businesses wanting access to the Airport. The incentive will be equal to 25% of the first year revenue improvement of existing Through-the-Fence businesses and 25% of the first year revenue on new Through-the-Fence Businesses. Said 25% incentive shall be earned and payable over the first 12 months following the effective date of a new or updated Through-the-Fence (TTF) agreement as TTF fees are collected. The lower portion of Table 8 above illustrates a projected scenario for the Through-the-Fence incentive.

DISINCENTIVES

It is clear from the calculation of the incentive formulas that minimum acceptable levels of performance earn no incentives. Additionally, City issuance of two (2) or more documented and validated written notices of default which Operator fails to satisfactorily correct according to the process as provided for in the Operating Agreement during the First Partial Contract Year or any Contract Year, as provided for in this Agreement, shall result in a financial disincentive in the amount of a 10% reduction of the Base Management Fee for the contract year in which such failure occurs or other action as provided for in the Operating Agreement. The Operator shall have the right to appeal the imposition of said disincentive to the City Council. Such appeal shall be filed in writing with the City Secretary within 30 days of the receipt of said notice.

SUMMARY OF INCENTIVE COMPENSATION

The following table provides a comprehensive overview of projected revenues, expenses, Operator compensation (both management fees and incentives), and the resulting operating margin for the Airport. The operating margin is available to the City (subject to appropriation by the City Council) for any purpose in connection with the Airport, including, without limitation, for funding of Airport plans and studies, funding of Airport capital projects (either new development or redevelopment), and to provide for Town oversight expenses.

**Addison Airport
Projected Financial Performance
for Incentive Compensation
Summary Detail - August 7,2000**

	Base Year	2001*	2002	2003	2004	2005	2006
Revenue							
Leases	3,200,000	2,520,000	3,528,000	3,704,400	3,889,620	4,084,101	4,288,306
Fuel Flowage	750,000	590,625	826,875	868,219	911,630	957,211	1,005,072
Other	50,000	39,375	55,125	57,881	60,775	63,814	67,005
Total Revenue	4,000,000	3,150,000	4,410,000	4,630,500	4,862,025	5,105,126	5,360,383
Expenses							
Pass Throughs	(350,000)	(262,500)	(350,000)	(350,000)	(350,000)	(350,000)	(350,000)
Maintenance/Operating Expenses	(400,000)	(300,000)	(400,000)	(400,000)	(400,000)	(400,000)	(400,000)
Operating Expenses		(562,500)	(750,000)	(750,000)	(750,000)	(750,000)	(750,000)
Operator Compensation							
Base Mgmt Fee (10%)		(315,000)	(441,000)	(463,050)	(486,203)	(510,513)	(536,038)
Mkt Fee (2%)		(63,000)	(88,200)	(92,610)	(97,241)	(102,103)	(107,208)
Real Estate Fee (2%)		(63,000)	(88,200)	(92,610)	(97,241)	(102,103)	(107,208)
Admin Fee (4%)		(126,000)	(176,400)	(185,220)	(194,481)	(204,205)	(214,415)
Total Mgmt Fee		(567,000)	(793,800)	(833,490)	(875,165)	(918,923)	(964,869)
Incentive Comp							
Finance -Revenue Growth		(36,000)	(50,400)	(52,920)	(55,566)	(58,344)	(61,262)
Finance - Other		(18,750)	(25,250)	(25,250)	(25,250)	(19,000)	(19,000)
Customer Service		(50,400)	(67,200)	(67,200)	(67,200)	(67,200)	(67,200)
Maintenance		0	(24,000)	(24,000)	(24,000)	(24,000)	(24,000)
Safety		0	0	(24,000)	(24,000)	(24,000)	(24,000)
Noise		0	(48,000)	(48,000)	(48,000)	(48,000)	(48,000)
Total Incentive Comp		(105,150)	(214,850)	(241,370)	(244,016)	(240,544)	(243,462)
Total Comp to Operator		(672,150)	(1,008,650)	(1,074,860)	(1,119,181)	(1,159,467)	(1,208,330)
Percentage of Total Airport Revenues		21.3%	22.9%	23.2%	23.0%	22.7%	22.5%
Incentive Comp as a % of Base Mgmt Fee		33.4%	48.7%	52.1%	50.2%	47.1%	45.4%
Incentive Comp as a % of Total Comp		15.6%	21.3%	22.5%	21.8%	20.7%	20.1%
Total Expenses		(1,234,650)	(1,758,650)	(1,824,860)	(1,869,181)	(1,909,467)	(1,958,330)
Operating Margin		1,915,350	2,651,350	2,805,640	2,992,845	3,195,659	3,402,052
Town Oversight		(57,461)	(79,541)	(84,169)	(89,785)	(95,870)	(102,062)
Plans/Assessments/Surveys/Studies		(200,000)	(200,000)	(200,000)	(200,000)	(200,000)	(200,000)
Retainage		(95,768)	(132,568)	(140,282)	(149,642)	(159,783)	(170,103)
Available for Captial Projects		1,657,890	2,371,810	2,521,471	2,703,059	2,899,789	3,099,991

* All years are based in the Town's fiscal year - October 1 to September 30, Therefore, 2001 is a partial year, January 1 to September 30.

ASSUMPTIONS FOR INCENTIVE COMPENSATION EXAMPLES AND ILLUSTRATIVE SPREADSHEET

- Initial Base Year is fiscal year 2000 ending Sept 30, 2000
- Year 1 is the First Partial Contract Year
- Incentive compensation for the First Partial Contract Year and the basis for calculating incentives shall based on .75 times the normal full year calculation methodology
- Initial Base Year Revenue is established for illustrative purposes as \$4,000,000 although actual gross revenue may be less in which case the Operating Agreement provides a mechanism for calculating the percentage of management fee in such event

- The minimum management fee under the Operating Agreement is established at \$720,000 for a full fiscal year and this amount is reflected in the summary spreadsheets
- Base assumption for revenue growth is established as 5% for modeling and illustrative purposes; comparative modeling will be based on variations to the 5% growth level
- Aircraft Tax Base is projected to grow in the amount of \$20,000,000 per year through the marketing and work effort of Operator
- Through-The-Fence Revenue growth is projected at \$75,000 for year 1 and then increasing by \$25,000 per year for the next 3 years
- Customer Service assumptions – meets 4 out of 5 level 1 objectives for all 6 years
- Maintenance and Safety assumptions – meets Maintenance level 1 objectives in year 2 and Safety level 1 in year 3
- Noise Abatement Assumptions – meets level 1 objectives beginning in year 2

Addison Airport Operator Compensation Financial Assumptions

Assumptions

	Base Year	2001	2002	2003	2004	2005	2006
Base Year Revenue Components							
Leases	\$3,200,000						
Fuel Flowage	\$750,000						
Other	\$50,000						
Total	\$4,000,000						
Fuel Flowage Fee	\$0.12						
Base Gallons Sold	6,250,000						
Adjustable Index Projections							
Adjustable Index - Years 1-5	0%	0%	0%	0%	0%	0%	0%
Operating Expenses adjusted for the adjustable index by year							
Pass Through Expenses Years 1-5	\$350,000	\$262,500	\$350,000	\$350,000	\$350,000	\$350,000	\$350,000
Operating Expenses Years 1-5	\$400,000	\$300,000	\$400,000	\$400,000	\$400,000	\$400,000	\$400,000
Management Fee Components							
Base Fee	10%						
Marketing Fee	2%						
Real Estate Fee	2%						
Administration Fee	4%						
Total Management Fee	18%						
Management Fee Floor	\$720,000						
Financial Incentive - Revenue Growth							
Projected Revenue Growth Rate	5%	5%	5%	5%	5%	5%	5%
Financial Incentive - Tax Base Expansion Incentive							
Tax Base Increase by year - estimated		\$20,000,000	\$20,000,000	\$20,000,000	\$20,000,000	\$20,000,000	\$20,000,000
Tax Rate	\$0.38						
Incentive Award Percentage	25%						
Financial Incentive - Through the Fence Revenue Expansion							
Through the Fence Revenue Increases - estimated		\$75,000	\$25,000	\$25,000	\$25,000	\$0	\$0
Percent Award	25%						
Customer Service Incentives - 0 = No Incentive, 1 = Level 1 obtained, 2 = Level 2 obtained							
Base Incentive Amount	\$140,000						
Town Staff/Council	\$28,000	1	1	1	1	1	1
Citizen	\$28,000	1	1	1	1	1	1
Airport Users/Based Aircraft	\$28,000	1	1	1	1	1	1
FBO's	\$28,000	0	0	0	0	0	0
Airport Recognition	\$28,000	1	1	1	1	1	1
Maintenance and Safety Incentives - 0 = No Incentive, 1 = Level 1 obtained, 2 = Level 2 obtained							
Base Incentive Amount	\$80,000						
Maintenance - level achieved by year - estim.	\$40,000	0	1	1	1	1	1
Safety - level achieved by year estimated	\$40,000	0	0	1	1	1	1
Noise Abatement Incentives - 0 = No Incentive, 1 = Level 1 obtained, 2 = Level 2 obtained							
Base Incentive Amount	\$80,000						
Noise - level achieved by year estimated	\$80,000	0	1	1	1	1	1
Non Operating Expenses							
Town Oversight	3% Per Year						
Plans/Assessments/Surveys/Studies	\$200,000 Per Year						
Retainage	5% Per Year						